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# COPYRIGHT IN INDUSTRIAL DESIGNS

BY

A. D. RUSSELL-CLARKE

OF THE INNER TEMPLE  
BARRISTER-AT-LAW



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## P R E F A C E

THE subject of copyright in industrial designs is of considerable importance to all those who are in any way interested in new designs for articles of manufacture. Twenty-two years have now elapsed since a book was last written on this subject, since when many changes have occurred. A considerable number of cases of importance have been decided in the courts. The Copyright Act of 1911 has been passed, which by Section 22 excludes from the protection of ordinary copyright anything which is capable of registration as a design. The proprietor of any new or original design, which is an industrial design, should therefore, if he wishes for protection, make certain of registering his idea as a design at the time of its invention, as otherwise he will have no means whatever of preventing others from copying it. The necessity of doing this, and of deciding at the outset whether the idea is capable of registration, and, if so capable, the necessity of registering it, has been clearly demonstrated in more than one recent case in the courts, where the plaintiff, suing on artistic copyright, has failed on the ground that his idea should have been registered as a Design.

The Patents and Designs Act of 1919 introduced a new definition of a design, substantially embodying the result of numerous decided cases, and *inter alia* excluding from registration anything which is a mere mechanical device. The author believes that it is extremely important that it should be realized exactly what sort of things are suitable, and what sort of things are not suitable for registration. Though a design need not be

artistic, this form of protection is meant to cover cases where the object is to please the eye. Where registration is applied for in proper cases, as for example in textiles, wallpaper, pottery, glass, furniture, etc., the protection obtained is perfectly satisfactory. But design registration is not meant to cover, and is no use for protecting such things as parts of machinery which are not a matter for the eye. Many cases have occurred where people who have obtained registration for such unsuitable things, have tried to bring an action for infringement and have lost, as a consequence of which an erroneous idea has arisen that design registration is ineffective as a form of protection. It is true that there are certain things which people invent which fall midway between a patent and a design, which perhaps ought to be protected, as they are protected in Germany under a *Gebrauchsmuster*, but for which there is no real protection in this country. In lieu of anything better, it may be of assistance to persons who have invented such things to register them as designs if they can, as the fact of possessing a registration may serve to deter others from entering the field. But a person who obtains a registration of this description should do so with his eyes open, and should realize the comparative hopelessness of trying to bring an action upon it.

In conclusion, I should like to thank my friend, Mr. G. W. Tookey, of 5 Fig Tree Court, for his great kindness in reading the manuscript, and making many valuable criticisms and suggestions.

A. D. RUSSELL-CLARKE

i ESSEX COURT,  
TEMPLE

*July, 1930*

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## ABBREVIATIONS

C.B.N.S.	. Common Bench Reports, New Series.
Ch.D.	. Law Reports Chancery Division.
De G. & Sm.	. De Gex and Smale's Reports.
H. & N.	. Hurlston and Norman's Reports.
K.B.	. Law Reports, King's Bench Division.
L.J.Ch.	. Law Journal Reports, Chancery.
L.J.Q.B.	. Law Journal Reports, Queen's Bench.
L.R.Ch.	. Law Reports, Chancery Appeals. (Up to 1890.)
L.R.Ch.App.	. Law Reports, Chancery Appeals. (After 1890.)
L.R.Eq.	. Law Reports, Equity.
L.R.H.L.	. Law Reports, House of Lords.
L.T.N.S.	. Law Times Reports, New Series.
M.C.C.	. Macgillivray's Copyright Cases.
R.P.C.	. Reports of Patent Cases.
R.S.C.	. Rules of the Supreme Court.
W.P.C.	. Webster's Patent Cases.
W.R.	. Weekly Reporter.



# COPYRIGHT IN INDUSTRIAL DESIGNS

## CHAPTER I

### THE OBJECT AND SCOPE OF REGISTRATION

REGISTRATION of designs is now governed by the Patents and Designs Acts, 1907 and 1919 (Consolidated) and by the Designs Rules, 1920. By registration at the Patent Office any one who produces a new or original design may obtain protection for his work. The protection so obtained is in the form of copyright, which recognizes the author's right of property in the results of his labour and invention. It confers upon him the sole right of reproducing his design for commercial purposes during the period over which his copyright extends, and this necessarily carries with it the right to prevent others from copying his design, and making use of it, without his leave or licence, during that period.

Registration gives copyright

By registration in the first instance, copyright is conferred for a period of five years, but by the payment of renewal fees this can be extended for two further periods of five years, making a total of fifteen years in all.

The copyright so conferred by registration is, however, subject to this, that the Courts have power, should the registered design in question ever come to be considered before them in any proceedings, to declare the design invalid, and the copyright null and void. This might be done, for instance, on the ground that the

But subject to power of the courts

design was not, in fact, a novel one at the date of its registration, or on the ground that what was registered was not really a design at all. The Courts thus have power to review any registration, and the registration itself is, therefore, only *prima facie* evidence that the copyright is good and the design a valid one.

Copyright in designs was first introduced in the year 1787, and was the outcome of a desire for some form of protection which made itself felt among those engaged in the linen trade. It was found that if a trader devised a novel design for a calico or a muslin which proved successful, it was only a matter of a very short time before every one else was marketing goods which were similar if not exactly the same in pattern.

With a view to remedying this state of affairs, the Act of 1787<sup>1</sup> was passed, since when there have been various Designs Acts, the most important of which are those of 1839, 1842, 1883, 1907, and 1919.<sup>2</sup> The Act of 1787 gave protection to inventors and proprietors of designs for linens, calicos, cottons, and muslins, and the protection was in the form of copyright in their designs, but under this original Act they did not have to register in order to obtain such copyright. Instead, in just the same way as authors of books and works of art to-day automatically possess copyright in their work under the Copyright Act of 1911, so every originator of a new design automatically possessed copyright in his work, and *ipso facto* had the right to prevent others from copying it. In 1839, however, registration of designs was introduced, and since then it has always been necessary to register a design in order to obtain the copyright.

<sup>1</sup> 27 Geo. III, c. 38.

<sup>2</sup> 2 Vict. c. 17. 5 and 6 Vict. c. 100. 46 and 47 Vict. c. 57. 7 Edw VII, c. 29. 9 and 10 Geo. V, c. 80.

By this same Act of 1839<sup>1</sup> protection was extended to far beyond the confines of the linen trade, it being granted to original designs for new patterns and also for new shapes for *any* article of manufacture, and this is still substantially the range of subject matter to which protection is accorded by the law of copyright in designs as it exists to-day. Thus, design copyright now covers not only designs for fabrics, but designs which are to be applied to any article of manufacture whatsoever, and the design may be not only for a pattern or ornamentation to be placed upon an article, but also for the shape in which an article is to be made. For example, a new pattern for a wallpaper and a new shape of wine glass would both be good subjects for protection.

But this form of protection extends only to designs which are for application to articles of manufacture, and is in no way concerned with designs not intended for industrial reproduction. Thus, the only designs which are so protected are industrial designs, and this form of copyright is created to meet the need of those engaged in designing articles to be manufactured in industry, and is not intended for artists, for whose benefit the Artistic Copyright Laws, now contained in the Copyright Act, 1911, exist.

Although usually the question is easy to decide, it is not in every case obvious whether a given design is an industrial design, and, as such, one requiring to be registered under the Patents and Designs Acts, or whether it is a work of art, and therefore within the scope of the Copyright Act, 1911. The only test is to consider carefully whether the subject matter sought to be registered does or does not come within the

In 1839 extended to articles of manufacture

And to shapes as well as patterns

Industrial designs only protected

Design distinguished from artistic works

definition of a design given in Sect. 93 of the Patents and Designs Act. Sect. 22 of the Copyright Act, 1911, debars from protection under that Act anything which is registrable as a design, and, therefore, prevents artistic copyright and industrial copyright overlapping.

And from  
patent

Although, generally speaking, the motive or reason which prompts a designer to seek protection for his work is quite immaterial to any consideration of whether a registration will be obtainable or not, the only material question being the intrinsic qualities of the design itself, nevertheless, an inquiry into the possible motives which could actuate him may be of some assistance in indicating in broad outline the distinction between what is and what is not likely to be suitable subject for registration. Thus, the author can only wish for protection because he feels that his particular shape or pattern is possessed of some peculiar merit or advantage of its own, which he would like to retain as his sole property. There are, in fact, only three possible types of advantage which a shape or pattern could possess—

1. Beauty.
2. Distinctiveness.
3. Mechanical utility.

In the case of the first he believes that he has a shape or pattern which will please the eye of the public, and induce them to buy his wares for their attractive appearance, in preference to those of other traders, whose goods, though equally practical and useful, are not so beautiful. In the second case, he thinks that his design is distinctive, and will serve to impart to his goods a definite appearance of their own, which will distinguish them from those of other traders. It may be that a single design will combine both of the above merits.

The third case is where the shape is not possessed either of any particular beauty or distinctiveness, but where what the author has evolved is really some purely mechanical contrivance, something possessing an advantage not in its appearance, but in the way in which it functions. Generally speaking, design registration provides for the first two of these cases, but not for the third. It protects appearance, but it does not cover function or methods of manufacture, which are the province of Patent Law.

Thus, on the one hand, registered designs must be distinguished from the subjects of artistic copyright, such as pictures, and, on the other hand, from purely mechanical contrivances which come within the law relating to Letters Patent.

With this as a preliminary statement, it will be possible in the next chapter to proceed to consider in greater detail the qualifications which are required to be present in a valid design.

pattern upon it, whereas it can have no existence at all apart from its shape or configuration. Thus, where the design is for a shape, it is really applied to the article by being incorporated into it, rather than applied to it in the literal sense of the word. As Lindley, L.J., put it in *in re Clarke's Registered Design* (13 R.P.C. 351 at page 358) "A design applicable to a thing for its shape can only be applied to a thing by making it in that shape."

#### The Article

By No. 17 of the Designs Rules, the Comptroller can require the applicant to lodge a statement of the purpose for which the article to which the design is to be applied is used. By Sect. 93 of the Act, article is defined as meaning "any article of manufacture, and any substance artificial or natural, or partly artificial and partly natural." As to what is the distinction between an article of manufacture, and a substance is nowhere stated, but presumably an article of manufacture is something which depends for its useful properties upon certain essential characteristics of shape. For example, a chair or a lamp shade.

A substance is something which is useful in its bulk form. For example, linoleum, or cloth, or wallpaper. Its useful properties are inherent in the nature of the material itself, and are independent of any peculiarity of shape.

The article to which the design is applied should, if it is submitted, have some purpose other than that of merely carrying the ornament. Otherwise, such things as oil paintings or photographs would be designs capable of registration, whereas no one could possibly suggest that this could be so. In the recent case of *Pytram, Ltd. v. Models (Leicester), Ltd.* (not yet reported), it was held that a piece of sculpture is a design

capable of registration, so that it would appear that the above statement does not apply when a design consisting of features of shape is in question, and that any such article is capable of registration. In the case, however, of certain two dimensional articles, where the article has no purpose beyond merely carrying the ornament, as in the case of a photograph, the article is so subordinate to the ornament that it may be said to practically disappear, and, in such a case, there is nothing capable of registration as a design.

It is possible to have a design applied to part of an article.<sup>1</sup> If this is the case, the "article" to which the design is applied is really the part. Thus, you might have a design for the knob of a teapot. Though the complete thing is the pot, the real article to which the design is applied is the knob only.

Design for  
Part of  
Article

## 2. THE APPLICATION MAY BE BY ANY INDUSTRIAL PROCESS OR MEANS.

The application may be by any industrial process or means, whether manual, mechanical, chemical, separate or combined. That the means must be industrial entails nothing more than this, that it must be possible to reproduce the design upon articles *en masse*. The actual process used may be of any description whatsoever. A particular shape may be given to an article by turning upon a lathe or by pouring into a mould. A particular pattern may be placed upon it by printing, painting, or engraving, or possibly sewn or woven upon it. Though, generally, it will be done by machinery, it need by no means necessarily be so. For instance, a man may design a special pattern for a lamp shade,

<sup>1</sup> *Walker, Hunter & Co. v. Falkirk Iron Co.*, 4 R.P.C. 390. In *re Clarke's Registered Design*, 13 R.P.C. 351.

and numbers of lamp shades may thereafter have that design applied to them by hand painting.

### 3. A DESIGN MUST BE SUCH THAT IN THE FINISHED ARTICLE IT WILL APPEAL TO THE EYE.

The words are: "Which in the finished article appeal to and are judged solely by the eye." This part of the definition and all that follows was inserted for the first time by the Act of 1919. It lays down what had been stated to be the law in many decided cases.<sup>1</sup> As to what is meant by appealing to the eye, it is obvious that any appeal must, in fact, be to one or more of the senses through the eye, as the eye itself is no more than a mere medium through which impressions are conveyed to the mind. This being so, it might have one of two meanings. It might mean that the appeal is to be simply to the sense of perception *per se*, i.e., to the lower sense, which merely notes the thing seen without any particular emotion or feeling being aroused. The other meaning which it could have is this, that the design must go further and appeal also to a higher sense, the aesthetic sense or sense of the beautiful; in other words, it might mean that a design must be artistic. It has, however, been laid down in decided cases that a design need not possess any artistic

Design Need  
not be  
Artistic

<sup>1</sup> *Cooper v. Symington*, 10 R.P.C. 264 at p. 267. *In re Bayer's Design*, 24 R.P.C. 65 at p. 74, 77, 80. *Harrison v. Taylor*, 4 H. & N. 815 at p. 819.

It was also repeatedly stated that the question of whether a design is new (for cases see Chapter III), and also of whether it has been infringed (see Chapter VI), is to be decided by appealing to the eye, and if this is to be so, the design must itself be capable of appealing to the eye. Thus, Fletcher Moulton, L.J., as he then was, said in *re Bayer's Design* (24 R.P.C. 65) at p. 77: "If the eye be the judge of infringement, it must be because the eye is the competent judge of that which is to be infringed. I am satisfied, therefore, that nothing but that which can be matter for the eye, to see, can be a good subject of Design."

merit<sup>1</sup> and this has never since been disputed. And, in fact, the latter interpretation would be quite untenable, because, though design law ought perhaps rightly to cover only such productions as are actually artistic, in fact an insuperable difficulty would arise if such were the case, namely, the absolute impossibility of judging between what is and what is not artistic, since that which appeals to one man as artistic and beautiful may in no way please another.

A design, therefore, need only appeal to the lower sense of perception, the sense which merely notes things. It must be such that it will appeal to the eye in the finished article, i.e., it must be noticeable in the finished article. To be noticeable it must have individuality. The requirement, therefore, really comes to this, that a design must have sufficient individuality of appearance to be noticeable in the finished article. Now the test of whether it is so noticeable, of whether it has this individuality, is to compare the appearance of the finished article with the appearance of the article before the design was applied to it.

It must,  
however, have  
individuality,  
i.e. be notice-  
able in the  
finished  
article

If the two appearances visibly differ, then there is obviously something in the design which appeals to the eye, that indefinable something which is called individuality. By its application, a design which has individuality will have altered the appearance of the article. It will have given to the article its individuality.

Now, where the article is an article of manufacture as opposed to a substance<sup>2</sup> and where the design is for a shape, there is a difficulty in making the required comparison between the original and the finished

<sup>1</sup> *In re Clarke's Design*, 13 R.P.C. 351 at p. 361. *Walker, Hunter & Co. v. Falkirk Iron Co.*, 4 R.P.C. 390 at p. 391.

<sup>2</sup> See p. 8, *supra*.

article. A design for a shape, as already indicated, can only be applied to an article by making the article in that shape. The original article can, therefore, only exist in the imagination, which means that the finished article can only be compared with an imaginary original article.

The question at once arises as to what is this imaginary article (to which the design is imagined to be applied) to be taken as being. The article is the general type of article in question, the genus or species *qua* use or purpose. For instance, chairs as a class, or tables as a class. Its shape must be taken to be the simplest and commonest known form of that type of article. For every species of article there must be certain incidents or general characteristics of shape which are essential to get the article to work and fulfil its function. An article possessing only these incidents is the article to which the design must be imagined to be applied. It may be called the fundamental article.

And must  
Involve an  
Advance upon  
the Funda-  
mental Form  
of the Article

If a design is a design within the meaning of the section, any article in which it has been incorporated must appear to the eye to possess some incidents of shape beyond those primary essential features which are the property of the fundamental article. The design by its application must have produced some visible alteration or embellishment upon this fundamental form. If an article to which an alleged design has been applied does *not* appear to the eye to contain any characteristics over and above the fundamental form, then there is no design within the meaning of the section.

The requirement of appealing to the eye is therefore really a preliminary test as to novelty, namely, novelty as compared with the fundamental form of the article

as above defined. In the next chapter a further kind of novelty will be considered, namely, novelty as compared with other designs, i.e., other individual forms within the general species.

A design for a pattern must necessarily produce an alteration in the appearance of the article, for it will always involve a substantial addition to the fundamental form. Thus, all patterns are designs within the meaning of the section.

Every shape is, however, not a design. In the case of a shape it may well be that the difference in appearance between the finished article and the original or fundamental form is so small as to be almost unobservable. If such is the case, there is no design within the meaning of the section. The registration if obtained is invalid.

#### 4. WHAT IS NOT A DESIGN.

The definition continues : " But does not include any mode or principle of construction, or anything which is in substance a mere mechanical device." Up till now the definition has been concerned with describing what a design *is*. The words now under consideration, however, describe what a design *is not*. The old definition of a design which remained in force up till 1919 contained no such limitation as this. It was as follows : "'Design' means any design (not being a design for a sculpture or other thing within the protection of the Sculpture Copyright Act, 1814) applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling,

Thus all  
Patterns  
necessarily  
Designs

But not  
all Shapes

casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined."

Quite apart from the fact that it started with the words, "Design means any design," which is scarcely a very efficacious way of defining what a design is, it will be seen that this definition contained no apparent limitation upon, nor guide to, what could be the subject of a valid registration. The words were, in fact, far too wide.

By the present definition, mere mechanical devices are excluded, as is anything which amounts to a mode or principle of construction. The reason for specifically mentioning them as being excluded arose from the fact that, in the past, attempts were frequently made to obtain by design registration a monopoly in things of this kind, which were not really designs at all, and, in fact, registrations were often obtained for things of this character.

The Courts, however, never lost sight of the true nature of a design, and invariably declared these unsatisfactory registrations to be invalid. The present words, by specifically excluding mere mechanical devices, and modes or principles of construction, substantially summarize what was constantly being laid down in these cases, and thus make clear by statute what had already been interpreted by the judges to be the law. In interpreting the meaning of the words, very great assistance is, therefore, to be obtained from a perusal of the decided cases. Though mere mechanical devices, and modes or principles of construction are on the same footing, in that they should both properly be the subject of a patent and not a design, they are, of course, not identical, and require separate consideration. First, then, as to mere mechanical devices.

**(a) NO MERE MECHANICAL DEVICE, I.E., NO SHAPE IN WHICH ALL THE FEATURES ARE DICTATED SOLELY BY THE FUNCTION OF THE ARTICLE, CAN BE A DESIGN.**

A mere mechanical device is a shape in which all the features are dictated solely by the function or functions which the article has to perform.<sup>1</sup> It is, in fact, the fundamental form, or something differing therefrom by only minute variations. Such a shape cannot be registered as a design.<sup>2</sup> If a man invents an article, i.e. if he is the first person to ever produce an article to fulfil a particular purpose or purposes, though he may take out a patent for it, he cannot by registration of a design obtain a monopoly in that article. He can only have a design for a particular form of the article, and that particular form must possess some features beyond those which are essential for the thing to fulfil its main purpose or purposes.

The fact, however, that some advantage, whether mechanical or otherwise, apart from the main purpose of the article, is incidentally derived from the adoption of a particular shape does not of itself exclude that shape from registration as a design.<sup>3</sup> Whether any such advantage is obtained or not is quite immaterial.<sup>4</sup>

Mere  
Mechanical  
Device not  
a Design

But Fact that  
Some Advan-  
tage Derived  
from Shape  
by no means  
Necessarily  
Debars from  
Registration

<sup>1</sup> *Tecalemit, Ltd. v. Ewarts, Ltd.* (No. 2), 44 R.P.C. 503.

<sup>2</sup> The number of designs so far invalidated in the Courts upon this ground is extremely small. In fact, the only reported case is that of *Tecalemit, Ltd. v. Ewarts, Ltd.* (44 R.P.C. 503). One reason is that, if an alleged design is a mere mechanical device, it also follows that it is not a new or original design (see Chapter 3), and it can, therefore, also (and more conveniently) be invalidated upon that ground.

<sup>3</sup> *Walker, Hunter & Co. v. Falkirk Iron Co.*, 4 R.P.C. 390 at p. 393. *Hecla Foundry Co. v. Walker, Hunter & Co.*, 6 R.P.C. 554 at p. 558, 559. *In re Bayer's Design*, 24 R.P.C. 65 at p. 74. *Rogers v. Driver, 20 L.J.Q.B. 31.*

<sup>4</sup> *Hecla Foundry Co. v. Walker, Hunter & Co.*, 6 R.P.C. 554 at p. 558. *In re Clarke's Registered Design*, 13 R.P.C. 351 at p. 358. *Moody v. Tree*, 9 R.P.C. 233 at p. 235.

Provided the shape, as a whole, complies with the requirements of a design, that is, provided it is capable of giving to the article to which it is applied a definite individuality of appearance, which renders it distinguishable from the fundamental form, it will be registerable even though some mechanical advantage necessarily follows from the shape in question. In other words, it is only *mere* mechanical devices, i.e. devices which fail to produce the requisite individuality of appearance in the article to which they are applied which are excluded.

Thus, in fact, if a thing is patentable, provided that it also appeals to the eye, there is no objection whatsoever to its being actually the subject of both a patent and a registered design.<sup>1</sup> A mere mechanical device, however, if protectable at all, can be the subject of a patent only, and not of a design. An inventor who seeks to protect something which is a mere mechanical device by the registration of a design probably does so, either because design registration is a cheaper form of protection than a patent, or because what he has invented, though of a mechanical nature, and, therefore, within the realm of patents, does not possess sufficient ingenuity to warrant the grant of a patent. But, whatever the cause, mere mechanical devices are now definitely laid down as being excluded from registration.

#### (b) NO MODE OR PRINCIPLE OF CONSTRUCTION CAN BE A DESIGN.

Anything which amounts to a mode or principle of

<sup>1</sup> *Werner Motors Ltd. v. A. W. Gamage, Ltd.*, 21 R.P.C. 137, 621. And see also: *Rogers v. Driver*, 20 L.J. Q.B. 31. *In re Bayer's Design*, 24 R.P.C. 65 at p. 74. *Walker, Hunter & Co. v. Falkirk Iron Co.*, 4 R.P.C. 390 at p. 394. It was also held in the case of *In re United States Playing Cards Company's Application*, L.R. 1908, 1 Ch. 297, that the same thing may be the subject of both a trade mark and a design.

construction is also specifically excluded. A mode or principle of construction is a process or operation by which a shape is produced, as opposed to the shape itself. To say that a shape is to be denied registration because it amounts to a mode or principle of construction is meaningless. The real meaning is this, that no design shall be *construed* so widely as to give to its proprietor a monopoly in a mode or principle of construction. What he gets a monopoly for is one particular individual and specific appearance. If it is possible to get *several* different appearances, which all embody the general features which he claims, then those features are too general, and amount to a mode or principle of construction. In other words, any conception, which is so general as to allow of several different specific appearances being made within it, is too broad, and will be invalid as amounting to a mode or principle of construction.

Only One  
Specific  
Appearance  
can be  
Protected

This is made abundantly clear in the judgment of Mr. Justice Parker, as he then was, in the case of *Pugh v. Riley Cycle Co., Ltd.*, (29 R.P.C. 196).<sup>1</sup> Here the design was for the framework of a motor wheel, and the statement of novelty attached to the registration was as follows: "The novelty consists in the disposition of the tyre rim *d*, in relation to the hub *e*, and in the cross sectional arrangement of the spokes *a*, *b*, *c*, such disposition and arrangement being shown in the accompanying drawing." His Lordship said (at page 202): "The second point being whether what the plaintiff registered was in fact a registrable design. A design to be registrable under the Act must be some conception or suggestion as to shape, configuration,

*Pugh v. Riley*

<sup>1</sup> See also *Philips v. Harbro' Rubber Co.*, 37 R.P.C. 233 at p. 242, and *Pilkington Bros., Ltd. v. Abrahams & Son*, 32 R.P.C. 61.

pattern, or ornament. It must be capable of being applied to an article in such a way that the article to which it has been applied will show to the eye the particular shape, configuration, pattern, or ornament, the conception or suggestion of which constitutes the design. . . . A conception or suggestion as to a mode or principle of construction, though in some sense a design, is not registrable under the Act. Inasmuch, however, as the mode or principle of construction of an article may affect its shape or configuration, the conception of such a mode or principle of construction may well lead to a conception as to the shape or configuration of the completed article, and a conception so arrived at may, if it be sufficiently definite, be registered under the Act. The difficulty arises where the conception thus arrived at is not a definite conception as to shape or configuration, but only a conception as to some general construction, the definite shape or configuration being consistently with such mode or principle of construction capable of variation within wide limits. To allow registration of a conception of such general characteristics of shape or configuration might well be equivalent to allowing the registration of a conception relating to the mode or principle of construction. Thus, in *Moody v. Tree* (9 R.P.C. 233) the design registered was the picture of a basket, the claim being for the pattern of the basket consisting of the osiers being worked in singly, and all the butt ends being outwards. Obviously, there could be made by this method of construction any number of baskets differing in pattern except that all would have a certain common characteristic due to the method of construction and visible to the eye. It was held that the registration was bad as being an attempt to register a

conception as to the mode of construction and not as to shape, configuration, pattern, or ornament.

Similarly, it was held in *Bayer's Design* (24 R.P.C. 65). The design registered was a picture of a corset, the novelty claimed being that it had the gores or gussets cut horizontally from front to back.

It was held that this was not a design capable of registration, being a conception as to method of construction only, although all corsets made by this method would have in common a peculiarity due to that method and visible to the eye. . . ."

His lordship then went on to consider the case in question, and at page 205: "The truth seems to be that it is the precise disposition of the inner flange of the hub in relation to the rim which determines the precise cross-sectional arrangement of the spokes and makes the conception of shape and configuration involved at all definite. Once allow this disposition to be altered and you have no definite conception of shape or configuration left, but only a general characteristic of shape due to the method of construction. In my opinion the registration so construed would bring the case within the authorities I have cited and would be void as an attempt to protect a mode of construction as opposed to a conception as to shape or configuration. The validity of the registration can, therefore, in my opinion only be saved by construing the application as seeking protection for that definite shape or configuration in the completed article, which will result from its construction precisely in accordance with the registered drawing or for shape or configuration which is to the eye substantially the same, . . . and in considering whether the shape or configuration is the same, engineering evidence is, for the most part, out

of place. The eye, and the eye only, must be the judge."

A given design, therefore, which might, if construed widely, be invalid as covering a mode or principle of construction, may well be perfectly good if construed more narrowly. In construing the ambit of a design, the Court, however, takes into consideration the design as registered *in toto*, that is to say, not only the picture, but the picture in conjunction with any claim or statement as to the nature of the design, which may have been registered therewith. And once registered the proprietor may not subsequently seek to reject any part of the description or claim.<sup>1</sup> If, therefore, the picture, as construed in the light of any claim attached to it, appears to be so wide as to cover a mode or principle of construction, then the design will be invalid on that ground. Thus, in *re Bayer's Design* (24 R.P.C. 65), quoted by Lord Parker above, the registration was held to be invalid upon the ground that it covered a principle of construction. The Court came to this conclusion by considering the registration as a whole, i.e. the design itself taken in conjunction with the claim, and they decided that the registration thus taken as a totality, if allowed, would amount to the author possessing a monopoly in a mode of manufacture. The design is, in fact, the picture shown on the registration as interpreted by any claim or statement which may be attached thereto.<sup>2</sup>

Actually, then, unless there is a claim appended to the registration, which seeks to enlarge the monopoly so as to cover a mode or principle of construction, it is very difficult to see how a design could be declared

<sup>1</sup> *Smout v. Slaymaker & Co.*, 7 R.P.C. 90.

<sup>2</sup> See also *Smout v. Slaymaker*, 7 R.P.C. 90. *Moody v. Tree*, 9 R.P.C. 233. *Cooper v. Symington*, 10 R.P.C. 264.

invalid upon this ground. It would simply be construed very narrowly so as to cover the exact shape shown and that only. Thus, in *Phillips v. Harbro' Rubber Co.* (37 R.P.C. 233), and also in *Wilson v. Chalco* (39 R.P.C. 252), in neither of which was there any claim, though it was said that the design was a mere method of manufacture, it is submitted that the real basis of the decisions rested on the fact that the designs were not novel. No new appearance was produced. Of course, it may be that if the plaintiff insists on contending for a broad reading of his design which would be tantamount to giving him a monopoly in a mode of construction, then the Court may accept his reading, and proceed to declare the registration invalid as covering a mode or principle of construction.

It will be realized from the above that, if a claim or statement of novelty is to be appended to a registration, its wording is of the utmost importance. Actually, it is not compulsory to add such a claim unless the Comptroller specially requires it. In some cases, it is, however, extremely important to have a claim in order to emphasize the features which are novel. The question of the claim has been thought to be of sufficient importance to merit separate consideration, and is accordingly discussed in Chapter V.

*Importance  
of Claim*

## SECTION 22 OF THE COPYRIGHT ACT, 1911.

With regard to certain conceptions, it is sometimes extremely difficult to decide whether they are works of art within the meaning of the Copyright Act, 1911, or whether they are industrial designs, and, therefore, require to be registered under the Patents and Designs Acts. For instance, a drawing for a Christmas card; to which category does this belong? At first sight it

*Designs  
Capable of  
Registration  
not within  
Copyright Act*

might appear to belong to both categories, and, before 1911, it probably could have obtained protection either as an artistic work under the Copyright Acts, or as a design under the Patents and Designs Acts. So that, assuming it was registrable as a design, even if it had not been so registered, the proprietor could, nevertheless, probably have sued for the infringement of it as an artistic work under the Copyright Acts.

The Copyright Act of 1911, however, has the effect of precluding the possibility of any such dual protection as it precludes from the protection of that Act anything which is in fact registrable as a design, and, therefore, prevents any overlapping. It is, therefore, now a matter of considerable importance to decide at the outset in a doubtful case whether a given conception is, in fact, registrable as a design or not, as if it *is* so registrable there will be no possibility of its being protected as an artistic work under the Copyright Act, and it should, therefore, be registered as a design at once. If the registration is not obtained when the design is first invented, or, rather, before it has actually been published, all hope of protection will be gone, as it will no longer be a design which is novel within the meaning of the Act.

Thus, in *Con Planck v. Kolynos Incorporated* (1925, 2 K.B. 804), which was an action for infringement of copyright in certain sketches for advertisement show cards, it was held that the sketches were designs capable of registration under the Patents and Designs Acts, and were, therefore, not protected under the Copyright Act, so that as the sketches had not been registered as designs, the Plaintiffs were unable to succeed.<sup>1</sup> In this case, however, it is questionable

<sup>1</sup> See also *Pytram, Ltd. v. Models (Leicester), Ltd.*

whether the Court ever really considered whether advertisement show cards could *properly* be registered as designs, as it appears to have come to the conclusion which it did largely upon the evidence of a patent agent, who merely stated that in his opinion the sketches in question were registrable. Seeing that the point was one of mixed law and fact, such evidence was, it is submitted, inadmissible, and, in a later case, similar evidence when tendered was not allowed.<sup>1</sup>

The section of the Copyright Act which prevents the overlapping of copyright in artistic works and copyright in designs, namely, Sect. 22, is as follows—

(1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

(2) General rules under Sect. 86 of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

It will be seen that the general effect of the section is to preclude from the protection of the Copyright Act anything which is registrable as a design, though one exception is made, namely, the case of a conception which, though so registrable, is not used or intended to be used as a model for industrial multiplication; in other words, is not intended for reproduction on a commercial scale. If the proprietor of something which is both capable of protection under the Copyright Act, and capable of registration as a design does not, in fact, register it as a design, he will have the protection of

Except where  
not for  
Industrial  
Multiplication

<sup>1</sup> *Pytram, Ltd. v. Models (Leicester), Ltd.*

the Copyright Act as long as he only produces it in small numbers, but if he subsequently proceeds to industrialize it he will lose all protection.

In cases where the conception is applied to such things as Christmas cards, advertisement posters, and post cards, it is very difficult to decide whether they are capable of registration or not. For such a conception which is in two dimensions, or substantially so, it must, if submitted, be applied to an article which has a purpose or object other than merely carrying the ornament.<sup>1</sup>

The question is, then, whether the purpose of the article is merely carrying the ornament, or whether it is something more. If the former is the case, then the conception is not registrable as a design; if the latter is the case, then it is capable of registration.

Though it is difficult to see why Christmas cards and post cards are not covered by the definition of a design as an ornament applied to paper or cardboard which has a purpose other than the mere carrying of the ornament, it is open to much doubt whether they must, in fact, be registered if they are to be the subject of any copyright. As regards posters, it is submitted that they are definitely not capable of registration. The question also arises as to whether drawings or sketches, not themselves actually so far applied to any article by any industrial means, but from which articles of manufacture are to be or might be made, are designs capable of registration. As a fact, of course, any drawing of an article or a pattern is registrable provided only that it is applied or to be applied to an article of manufacture. But a similar drawing applied merely say to the cover of a magazine or to a page of a book would

<sup>1</sup> See p. 8 and 9, *supra*.

clearly not be registrable. The question of its registrability in such a case must, therefore, depend upon the intention of the author at the time of his making of the design.<sup>1</sup> Whether it was registrable must depend upon whether he made it with a view to using it for application to actual articles or not. If the object of his design was that it should be applied to articles of manufacture, or if it was, in fact, so used, then it would be registrable. Otherwise, it would not.

As already stated, though, in general, designs capable of registration are excluded from the Copyright Act, an exception is made where the design though registrable, is shown not to have been intended to be used, and, in fact, not to have been used for application to articles on an industrial scale. As to what amounts to multiplication on an industrial scale, Rule 89 of the Designs Rules is as follows—

A design shall be deemed to be used as a model or pattern to be multiplied by any industrial process within the meaning of Sect. 22 of the Copyright Act, 1911.

(a) When the design is reproduced or is intended to be reproduced in more than 50 single articles; unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set, as defined by Rule 5 of these rules;

(b) Where the design is to be applied to (1) printed paper hangings; (2) carpets, floor cloths, or oil cloths, manufactured, or sold in lengths or pieces; (3) textile piece goods or textile goods manufactured or sold in lengths or pieces; (4) lace not made by hand.

The effect of (b) is clear. Any design which is to be applied to textiles is to be considered a model for industrial multiplication, and is accordingly debarred from protection under the Copyright Act.

<sup>1</sup> See *Ware v. Anglo-Italian Commercial Agency, Ltd.* (No. 1), M.C.C. (1917-23), p. 436, and also the opinion expressed by Eve, J., in *Stephenson, Blake & Co. v. Grant Legros & Co., Ltd.*, 33 R.P.C. 406.

If more than  
Fifty Repro-  
ductions there  
is Industrial  
Multiplication

With regard to (*a*). If less than fifty reproductions of a model are all that are made, and are all that are intended to be made, the reproduction in such a case is not on an industrial scale, and protection will be given under the Copyright Act. But, if more than fifty reproductions are made or intended to be made, there will be industrial multiplication, and no such protection will be afforded. The material date at which the intention to reproduce is to be considered is the date when the design is brought into being.<sup>1</sup> In *Ware v. Anglo-Italian Commercial Agency, Ltd.*, No. 1 (M.C.C. (1917-23) 436), the plaintiff had bought 100 Fiat motor chassis, and on a photograph of one of these chassis had had drawn a motor lorry body. The defendants copied the plaintiff's drawing and issued it as an advertisement in the form of a post card. The plaintiff moved for an injunction to restrain infringement of artistic copyright in the drawing. It was held upon the interlocutory proceeding that the drawing was a design capable of registration under the Patents and Designs Acts, that it was a model to be multiplied by an industrial process which on the evidence was intended to be reproduced in more than fifty articles, the intention of the plaintiff being to fit the body to as many as possible of the 100 chassis which he had acquired, so that it did not come within the exception to Sect. 22, and was, therefore, excluded from the protection of the Copyright Act.

In a second motion by the same plaintiff against the same defendants (M.C.C. (1917-23), page 371), the facts were as follows: A motor lorry body based on the design having been built and fitted on a chassis the complete car was photographed in a London square. The

<sup>1</sup> *Ware v. Anglo-Italian Commercial Agency, Ltd.* (No. 1), M.C.C. (1917-23), p. 436.

defendants reproduced the photograph (slightly altered) on a post card which they used for an advertisement. The plaintiff complained of the post card as an infringement of his copyright in (1) the original design, (2) the photograph of the car. On the question of the copyright in the photograph, it was held that Sect. 22 did not exclude *it* from protection as an artistic work, and the defendants had copied it, and there was infringement.

It is submitted that the distinction between the two cases is that in the first one, the drawing was brought into existence with the object of being used as an industrial design, i.e. used to make a car from. The photograph, on the other hand, was not produced with the object of articles being made according to it, but solely for advertising purposes, and anyhow was probably not registrable as it was not new. If, however, the body had been put together secretly in a workshop, no drawing having been originally made, then, if this experimental car and body when finished had been photographed, that photograph might well have been capable of registration as a design, its object being to act as a representation according to which numbers of other bodies might afterwards be made.

It will be seen that Rule 89 states that if all the articles in which the design is intended to be reproduced form only a single set, then even though the total number of articles in the set exceeds fifty, the design will not be considered to be a model or pattern for industrial multiplication, and will, therefore, not be excluded from protection under the Copyright Act, 1911. "Set" is defined in the Designs Rules. By Rule 5—

"Set means a number of articles of the same general character ordinarily on sale together, or intended to be used

together, all bearing the same design with or without modifications not sufficient to alter the character or not substantially affecting the identity thereof. Where there is any doubt as to whether given articles do or do not constitute a set, the doubt shall be determined by the Comptroller."

This provision is intended to apply to such things as dinner services or tea services.

### COLOUR.

In *Grafton v. Watson* (50 L.T.N.S. 420), it was said by Chitty, J.: "When I speak of colour I am aware that colour cannot be the subject matter of design." But, this in no way means that colour is immaterial in a design. Nothing could, in fact, be farther from the truth, for colour can undoubtedly form part of a design. Thus, in *Norton v. Nicholls* (28 L.J.Q.B. 225), Lord Campbell, C.J., said (at page 227) : "The colours on both sides were essentially as much parts of the shawl, or of the combination, as any of the five points which he claimed at the trial."<sup>1</sup> *The Secretary of State for War v. Cope* (36 R.P.C. 273) was a case of a registration in which colour formed an important part of the design. It was a design for the Mons War Medal ribbon. *Nevill v. Bennett & Sons* (15 R.P.C. 412) is a case which might be thought to suggest that colour can form no part of a design. There, Hall, V.C., said (at page 417) : "I recognize the great difficulty there is in a case of this kind arising from the fact of the difference in colour. I can quite understand that if a person wore a dress with the ground coloured like the registered pattern of the plaintiffs, and another person wore a dress coloured like the one registered and claimed by

<sup>1</sup>See also *Knowles & Co., Ltd. v. Bennett & Sons and Bigio*, 12 R.P.C. 137 at p. 142.

the defendants, at a casual glance those would appear to be two separate dresses. But one has to remember that, taking the language of Mr. Gibson, the defendant's witness (who was one of the defendant's witnesses who gave one a great deal of assistance in arriving at a conclusion favourable to the plaintiffs), he says that a design might be printed in forty different colours, and still be the same design. I rely on this question of colour also on the language used on that subject by Mr. Justice Chitty in *Grafton v. Watson.*" Here, however, it will be seen that the Vice Chancellor was considering a case where the whole dress, which has various patterns drawn upon it, is simply coloured right over with one wash of colour. In such a case, of course, the use of a different colour would not make a new design. But if parts of a particular pattern, which might be old if uncoloured, were subjected to a particular scheme of colouring, the whole might well present a completely different appearance, the colouring forming part of the combination which makes up the appearance as a whole. It is a well-recognized principle of architecture and decoration in general that colour will alter the apparent proportions of lines, and can, therefore, alter the appearance of the design as a whole. Also, it is perfectly possible to completely alter the appearance of a pattern by bringing one or other part of it into prominence by means of colouring. Thus, it should be possible to obtain a perfectly valid registration for a design in which colour plays a prominent part, especially if the nature of the colouring is called attention to in the claim.

## CHAPTER III

### NOVELTY AND ORIGINALITY

THE last chapter discussed the qualifications which an alleged design must possess in order to be a design within the meaning of the Act.

In this chapter the question of novelty and originality of the design will be considered.

By Sect. 49 of the Act, the Comptroller is empowered to register ". . . any new or original design not previously published in the United Kingdom." Thus, only designs which are new or original at the date of registration will be afforded protection.

Design Need  
Not Itself  
be New

Sufficient if  
it is New  
for the Type  
of Article to  
which Applied

Saunders  
*v. Wiel*

The design (i.e., the shape or pattern) need not, however, necessarily be an entirely new shape or pattern which has never existed before. It will be sufficient if articles of the particular type to which it is applied have never been made in that shape, or with such a pattern upon them before. In other words, all that is required is that the design should be a new or original one for the particular subject matter, i.e. for the particular type of article, whether an article of manufacture or a substance, to which it is applied. The case in which this principle was first laid down was the well-known case of *Saunders v. Wiel* (10 R.P.C. 29),<sup>1</sup> where the design consisted of the handle of a spoon made to represent Westminster Abbey seen from a particular point of view. The design had actually been copied from a photograph of the Abbey. The validity of the design was upheld, Bowen, L.J., saying (at

<sup>1</sup> The old case of *Adams v. Clementson* (12 Ch.D. 714) being doubted.

page 33) : " It seems to me that the novelty and originality in the design, within this section, is not destroyed by its being taken from a source common to mankind. . . . The novelty may consist in the applicability to the article of manufacture of a drawing or design which is taken from a source to which all the world may resort. Otherwise, it would be impossible to take any natural or artistic object and to reduce it into a design applicable to an article of manufacture, without also having this consequence following, that you could not do it at all in the first place unless you were to alter the design so as not to represent exactly the original; otherwise there would be no novelty in it, because it would be said that the thing which was taken was not new. You could not take a tree and put it on a spoon, unless you drew the tree in some shape in which a tree never grew, nor an elephant unless you drew it and carved it of a kind which had never been seen. An illustration, it seems to me, that may be taken about this is what we all know as the Apostle's spoons. The figures of the Apostles are figures which have been embodied in sacred art for centuries, and there is nothing new in taking the figures of the Apostles, but the novelty of applying the figures of the Apostles to *spoons* was in contriving to design the Apostles' figures so that they should be applicable to that particular subject matter. How does a public building differ from that? In no sense it seems to me." Thus, all that is required is that the design should be a new or original one for the subject matter to which it is applied.<sup>1</sup> Subject matter as here used means purpose<sup>2</sup>, or, more specifically, type of article *qua* purpose or use.

<sup>1</sup> *Walker, Hunter & Co., Ltd. v. Falkirk Iron Co.* 4 R.P.C. 390. *Le May v. Welch*, 28 Ch.D. 24.

<sup>2</sup> *In re Bach's Design*, 6 R.P.C. 376.

Thus, in *re Clarke's Design* (13 R.P.C. 351), the authorities were reviewed and Lindley, L.J., said (at p. 359): "The design must be new or original with reference to the kind of article for which it is registered, meaning by kind of article, not the class of article mentioned in the schedule to the rules, but the kind of article having regard to its general character and use. A design may be new for a coal scuttle, but not for a bonnet. On the other hand, a design for a shade of a gas lamp can hardly be new if it was old for an oil lamp."

Thus, all lamp-shades are articles of manufacture whose purpose is the same, namely, to shield the eyes. Similarly, linoleums, chintzes, and wall-papers are all substances whose purpose is the same, namely, to cover, and, therefore, a pattern old for a chintz could hardly be novel when applied to a wall-paper, whereas if applied to a teacup, or a piece of soap, it certainly would be novel.

Thus, it is perfectly permissible to take a shape or pattern which has already been registered in one class, and proceed to register it in another class, provided the two registrations are in connection with two completely different types of article. But it is *not* permissible to do so if the application is to two similar types of article.

Thus, in *re Bach's Design* (6 R.P.C. 376), where a previous design had already been registered in Class 12 (goods not included in other classes) for a lamp-shade in the shape of a rose a registration in Class 4 (porcelain, earthenware, etc.) for a similar shape of lamp-shade was held to be invalid.

Similarly, in *re Read and Greswell's Design* (6 R.P.C. 471), a registration in Class 12, which had been obtained for a candle-shade in the shape of a chrysanthemum,

Type of Article Means  
Type of Article qua Use

Thus can Register same Design in Another Class if Applied to Different Type of Article

But not if Applied to Same Type

was removed from the register on its being shown that a similar shape of candle-shade had already been registered in Class 5 (paper), Chitty, J., saying of the design : " It cannot be said to be new or original if it is already being applied to articles of an analogous character."

And in *Dover Ltd. v. Nürnberg Celluloid Waren Fabrik* (27 R.P.C. 498) a design for a pattern for a bicycle handle was held invalid on its being shown that a similar pattern had already been in use upon the handles of knives and pens.

An exception is, however, made in favour of an actual proprietor of a registered design. By Sect. 50 of the Act—

Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

(a) On the grounds of the design not being a new or original design by reason only that it was so previously registered ; or

(b) On the ground of the design having been previously published in the United Kingdom, by reason only that it has been applied to goods of any class in which it was so previously registered.

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from the previous registration.

Thus, anyone who is already on the register may, if he thinks fit, subsequently extend his registration to other classes. But such subsequent registrations will expire on the same date as the original registration.

It is said that protection will be given to any design which is new or original. As to what distinction, if any, is to be drawn between the words new and original is doubtful. It is submitted that the view advanced by Buckley, L.J., in *Dover Ltd. v. Nürnberg Celluloid Waren Fabrik* (27 R.P.C. 498) is probably the correct

Distinction  
between  
New and  
Original

one. There he said that new referred to cases where the shape or pattern was completely new in itself, whilst original referred to cases where, though old in itself, it was new in its application to the particular type of article in question. He said (at page 503) : " If the design be new it may be registered under that expression. But the Act by Sect. 49 seems to contemplate that it may be registered, even if it be not new, provided it be original. The explanation of this lies possibly in the fact that the novelty may consist not in the idea itself, but in the way in which the idea is to be rendered applicable to some special subject matter. The word 'original' contemplates that the person has originated something, that by the exercise of intellectual activity he has started an idea which had not occurred to any one before, that a particular pattern or shape or ornament may be rendered applicable to the particular article to which he suggests that it shall be applied. If that state of things be satisfied, then the design will be original, although the actual picture or shape is old in the sense that it has never existed with reference to another article before. It is easier by illustration in the concrete than by words in the abstract to explain what I mean. First, a few illustrations as to shape. The traditional figure of Falstaff is as old as Shakespeare, but if a person conceived for the first time, the idea of making a wine beaker in the form of the figure of Falstaff, that would be an original design for a wine beaker. The same would be true of an Uncle Toby jug for beer. The words new, or original, involve the idea of novelty, either in the pattern, shape, or ornament itself, or in the way in which an old pattern, shape, or ornament is to be applied to some special subject matter."

Whether a design is novel (either in itself or for the type of article to which it is applied) is a matter of fact to be decided by the eye. If the same shape or pattern, or one substantially similar, has previously been thought of in connection with the type of article in question, and the idea published,<sup>1</sup> i.e., made available to the public, then the design will be deprived of its novelty. The previous idea or design, whether itself actually registered as a design or not, will act as an anticipation of the later design, and will be a bar to its protection. That the eye, and the eye alone, is to be the judge of identity, and is to decide whether one design is or is not an anticipation of another, has been laid down time and time again in numberless cases.<sup>2</sup> Whether a design is more useful than other designs which have gone before is not to be considered.<sup>3</sup> It is simply the general impression gathered by the eye that counts, and it is, therefore, impossible to lay down any hard or fast rule which can be followed. But mere slight variations from articles already manufactured are not registrable; the variation from what has gone before must not be trivial or infinitesimal<sup>4</sup>; small variations which any skilled workman might make between the articles which he makes for different customers are not enough.<sup>5</sup> The novelty or originality should be

Eye the  
Judge of  
Novelty

Utility not  
to be  
Considered

Appearance  
Must be  
Substantially  
New

<sup>1</sup> As to exactly what amounts to publication, see Chapter IV.

<sup>2</sup> *Moody v. Tree*, 9 R.P.C., 233. *Pugh v. Riley Cycle Co., Ltd.*, 29 R.P.C., 196. *Jones and Attwood, Ltd. v. National Radiator Co., Ltd.*, 45 R.P.C. 71.

<sup>3</sup> *Walker, Hunter & Co. v. Falkirk Iron Co.*, 4 R.P.C. 390. *Moody v. Tree*, 9 R.P.C. 335. *In re Clarke's Registered Design*, 13 R.P.C. 351, at p. 358. *Allen West & Co., Ltd. v. British Westinghouse Electric and Manufacturing Co., Ltd.*, 33 R.P.C. 157, at page 164.

But see the remarks of Romer, J., in *Tyler & Sons v. Sharpe Bros. & Co.*, 11 R.P.C. 35.

<sup>4</sup> *In re Rollason's Design*, 15 R.P.C. 441. *Lazarus v. Charles, L.R.* 16 Eq. 117.

<sup>5</sup> *Simmons v. Mathieson & Co., Ltd.*, 28 R.P.C. 486, at p. 491.

substantial,<sup>1</sup> though the actual standard of ingenuity required on the part of the author is extremely small.<sup>2</sup> The question which has to be decided is whether the two appearances are substantially the same or not. The design must be looked at as a whole,<sup>3</sup> the question being whether an article made according to the design under consideration is substantially similar in appearance to an article made according to the alleged anticipation. The test is not only to look at the two designs side by side, but also apart, and a little distance away.<sup>4</sup>

Whole Design  
need not  
be New

The whole of the design need not be new. "The design may be valid within the Act, although all the parts are old except some particular part only which is new or original. The novelty or originality of the particular part may be sufficient to impart the character of novelty and originality to the whole." (Per Chitty, J., in *Walker & Co. v. A. G. Scott & Co.*, 9 R.P.C. 482, at page 485).<sup>5</sup> And, in fact, a design may well be novel although *all* the parts are old, for the combination of two or more old and well-known designs or parts of designs will certainly constitute novelty, if the effect, i.e., the appearance of the combination as a whole, is new.<sup>6</sup> And possibly even the omission of something

Combination  
of Old Parts  
Registrable  
if Effect New

<sup>1</sup> *Le May v. Welch*, 28 Ch.D. 24, at p.p. 34, 35. *Allen West & Co., Ltd. v. British Westinghouse Electric and Manufacturing Co., Ltd.*, 33 R.P.C. 157, at p. 165. *Simmons v. Mathieson & Co., Ltd.*, 28 R.P.C. 486, at p. 491.

<sup>2</sup> *Walker, Hunter & Co. v. Falkirk Iron Co.*, 4 R.P.C. 390. *Vandervell & Co. v. Lundberg & Sons*, 33 R.P.C. 60.

<sup>3</sup> *In re Clarke's Registered Design*, 13 R.P.C. 351, at p. 360. *Allen West & Co., Ltd. v. British Westinghouse Electric and Manufacturing Company, Ltd.*, 33 R.P.C. 157, at p. 165.

<sup>4</sup> *Grafton v. Watson*, 50 L.T.N.S. 420.

<sup>5</sup> And see also *Staples v. Warwick*, 23 R.P.C. 609.

<sup>6</sup> *Harrison v. Taylor*, 4 H. & N. 815. *In re Clarke's Registered Design*, 13 R.P.C. 351, at p. 360. *Heinrichs v. Bastendorff*, 10 R.P.C. 160. *Phillips v. Harbro' Rubber Company*, 37 R.P.C. 233. *Nevill v. Bennett and Sons*, 15 R.P.C. 412, at p. 415. *Sherwood and Cotton v. Decorative Art Tile Co.*, 4 R.P.C. 207. *Wall-paper Manufacturers, Ltd. v. Derby Paper Staining Co.*, 42 R.P.C. 429.

from an old shape or pattern might result in a new or original design which could be protected.<sup>1</sup>

In the case of an article consisting of several parts, if there is only one part which is new in shape, though that part may fail to give a sufficiently novel appearance to the article for it to be registrable as a whole, nevertheless, the part may possibly be registrable by itself.<sup>2</sup> If such is the case, the article to which the design is applied is presumably the part, and not the article as a whole.

To assist in deciding the question of novelty and originality (as also that of infringement) the Court may receive the evidence of experts in the trade.<sup>3</sup> Such evidence is not only admissible, but generally desirable, for nothing will be counted new or original unless it differs from what has gone before by something more than ordinary trade variants.<sup>4</sup> Thus, in *Phillips v. Harbro' Rubber Co.* (37 R.P.C. 233), Lord Moulton said (at page 240): "It is necessary with regard to the question of infringement, and still more with regard to the question of novelty and originality, that the eye should be that of an instructed person, i.e., that he should know what was common trade knowledge and usage in the class of articles to which the design applies. The introduction of ordinary trade variants into an old design cannot make it new or original. For example, if it is common practice to have or not to have spikes in the soles of running shoes, a man does not make a new or original design out of

Part of an Article May be Registered

Expert Evidence Admissible

Mere Trade Variants Not Registrable

<sup>1</sup> *In re Clarke's Registered Design*, 13 R.P.C. 351, at p. 360.

<sup>2</sup> *Walker, Hunter & Co. v. Falkirk Iron Co.*, 4 R.P.C. 305. *In re Clarke's Registered Design*, 13 R.P.C. 351.

<sup>3</sup> *Grafton v. Watson*, 51 L.T.N.S. 141. *Cooper v. Symington*, 10 R.P.C. 264.

<sup>4</sup> *Phillips v. Harbro' Rubber Co.*, 37 R.P.C. 233. *Negretti & Zambra v. Stanley & Co., Ltd.*, 42 R.P.C. 358.

an old type of running shoes by putting spikes into the soles. The working world as well as the trade world is entitled at its will to take, in all cases, its choice of ordinary trade variants for use in any particular instance, and no patent and no registration of a design can prevent an ordinary workman from using and not using trade knowledge of this kind. . . . duty of the Court to take especial care that no design shall be counted new or original unless it is distinguished from what previously existed by something essentially new or original which is different from ordinary trade variants which may have long been common matters of taste or choice in the trade."

A trade variant is, therefore, some embellishment (useful or otherwise) which is known, and sometimes, though not always, used in connection with a particular class of article or class of work.

There is no novelty or originality in placing such an embellishment upon some special design within the class, which never happens to have been made with that particular embellishment upon it before. Thus, in the example given by Lord Moulton above, the class of work or article is running shoes, and the trade variants, spikes. Some shapes of running shoes may have had spikes on, and others not. The addition of spikes to some particular shape of shoe, which happened up to that time always to have been made without spikes, cannot make that old shape a new or original one within the meaning of Section 49 of the Act.

It has also been said that there can be no novelty nor originality where the shape is imposed upon the designer by the necessity of his task<sup>1</sup> for some mental effort, small though the amount may be, is necessary

<sup>1</sup> *Vandervell & Co. v. Lundberg & Sons*, 33 R.P.C. 10.

upon the part of the inventor.<sup>1</sup> Some skill and labour of a draughtsmanlike nature must be involved.<sup>2</sup>

Thus, mere workshop alterations which any ordinarily competent workman would make in order to fit one thing upon another cannot possibly constitute novelty.<sup>3</sup> In an infringement action the fact that the defendant has copied the plaintiff's design may be good evidence tending to show that that design is novel.<sup>4</sup>

<sup>1</sup> *Dover Ltd. v. Nürnberger Celluloid Waren Fabrik*, 27 R.P.C. 498.

<sup>2</sup> *Harrison v. Taylor*, 4 H. & N. 815, at p. 820.

<sup>3</sup> *Allen West & Co., Ltd. v. British Westinghouse Electric and Manufacturing Co., Ltd.*, 33 R.P.C. 157.

<sup>4</sup> *Nevill v. Bennett & Sons*, 15 R.P.C. 412. *Cartwright v. Coventry Radiator Co.*, 42 R.P.C. 351, at p. 357.

## CHAPTER IV

### PUBLICATION

THE last chapter discussed the sort of differences which were necessary, as compared with what had gone before, for a design to be considered new or original. Sect. 49 says that the Comptroller may register "any new or original design not previously published in the United Kingdom." Whether a design is new or original or not is, therefore, to be decided by comparing it *only* with such earlier designs as were actually *published* previously to the date of the application for registration. Although substantially the same design may have been in *existence* before, it will not be an anticipation, and will not destroy the novelty of the design in question, if it was not actually published, i.e., disclosed to the public. It is not always easy to determine whether a given previous design has been published or not, what is entailed by publication being impossible to state in exact terms. Each case has, therefore, to be decided on its merits. Much assistance can, however, be derived from judicial decisions, and those on patent law are all good authorities in this connection, as exactly the same question has to be determined in patent cases.

Broadly speaking, there is publication if the previous design has been disclosed to the public, as opposed to being kept secret. And it is not only previous designs which can anticipate. The owner of a design may anticipate his own design, for there will also be publication if he discloses his design to the public before the date on which he applies for registration. In short,

once the public is in possession of the design, registration cannot subsequently be obtained for it. The question which has to be decided is, therefore, *has* the public been put in possession of the design? Has it knowledge of the design? It is not, of course, necessary that every member of the public should possess the knowledge.<sup>1</sup> It is sufficient, and there will be publication if the knowledge was either—

- (1) Available to members of the public; or
- (2) Actually in fact shown and disclosed to some individual member of the public who was under no obligation to keep it secret.

It is not necessary that the design should have been actually used. There will just as much be publication if it is shown that it was known to the public, without ever having actually been put into use. Thus, publication may be of two types.<sup>2</sup>—

- (a) Publication in prior documents.
- (b) Publication by prior user.

(a) PUBLICATION IN DOCUMENTS.

(1) Cases where Knowledge has been Available to the Public.

If the design had been contained in documents, such, for instance, as books or catalogues, which had been sold or circulated, there would, in such a case, unquestionably, be publication. It is not, however, necessary that large numbers of the document should be proved to have been actually sold or circulated. In *Harris v. Rothwell* (4 R.P.C. 225), Lindley, L.J., said (at page 230): “It is sufficient to show that the invention was so described in some book or document, published in this country, that some English people may

<sup>1</sup> *Plimpton v. Malcolmson*, 1876, 3 Ch.D. 531, at p. 556.

<sup>2</sup> *Plimpton and Malcolmson*, 1876, 3 Ch.D. 531.

fairly be supposed to have known of it." And in *Otto v. Steel* (3 R.P.C. 109), Pearson, J., said (at page 112): "The question is whether or not this book has been published in this country in such a way as to become part of the public stock of knowledge in this country. It is not, to my mind, necessary for that purpose to show that it has been read by a great many people, or that any person in particular has got from it the exact information which it is said would have enabled Dr. Otto in this case to have made his engine. But, to my mind, it must have been published in such a way that there may be a reasonable probability that any person, and amongst such persons, Dr. Otto, might have obtained that knowledge from it."

Thus, if a firm of publishers had printed and published a book, that would probably be sufficient. At any rate, the fact that copies of a book had been sent to a bookseller and exposed for sale, though not absolutely conclusive proof that the contents had become part of the public knowledge, would be strong *prima facie* evidence to that effect, which could not easily be rebutted.

In *Plimpton v. Malcolmson*, 1876, 3 Ch.D. 531, Jessel, M.R., said (at page 562): ". . . if a man publishes a book, that is, a large number of copies, and sends them to booksellers for sale, and they are, for a reasonable time, exposed in the window, so that you may infer the people have known and seen them, and may reasonably so infer, though you do not prove one has been sold—if the other side cannot prove that one has not been sold, you may reasonably infer that some of those books have been sold."

The presence of even only one copy of a document in a public library has been held to constitute

publication.<sup>1</sup> But if the document, though in the library, was not, in fact, in a place where it was easily accessible to members of the public, then there would not be publication.<sup>2</sup> In *The United Horse Nail Co. v. Stewart & Co.* (2 R.P.C. 122) the alleged anticipation consisted of an American specification which had been deposited in the Patent Office library, and was in a place where it was accessible to all persons making use of the library. It was held that it constituted a prior publication. In *Harris v. Rothwell* (4 R.P.C. 225), two copies of German specifications had been deposited in the German Department of the Patent Office Library. One had been there a year and the other six weeks, and their presence had been published in the *Patent Office Journal*. It was held that there was publication. Lindley, L.J., said (at page 232): "Prima facie a patentee is not the first inventor of his patented invention if it be proved that before the date of his patent an intelligible description of his invention, whether in English or in any other language commonly known in this country was known to exist in this country, either in the Patent Office, or in any other library to which the public are admitted, and to which persons in search of information on the subject to which the patent relates would naturally go for information. But if, as in the Plimpton cases and *Otto v. Steel* it be proved that the foreign publication, though in a public library, was not, in fact, known to be there, the unknown existence of the publication in this country is not fatal to the patent."

<sup>1</sup> *United Horse Nail Co. v. Stewart & Co.*, 2 R.P.C. 122. *Harris v. Rothwell*, 4 R.P.C. 225. *United Telephone Co. v. Harrison Cox Walker & Co.*, 21 Ch.D. 720.

<sup>2</sup> *Stead v. Williams*, 1 W.P.C. 137.

But not if  
not Accessible

Of the cases referred to in the above judgment, in the Plimpton cases<sup>1</sup> one copy of a book had been sent to the Patent Office, but, owing to a mistake, it was not entered in the catalogue, and it was taken into a private room and left there. It was held that the book was not accessible to the public, and that there had been no publication. Similarly, in *Otto v. Steel*,<sup>2</sup> one copy of a book was in the British Museum. It was not kept in the reading room, but in an inner room, and was catalogued only under the name of the author. It was held that, in these circumstances, it could not be relied upon as an anticipation.

No Publica-  
tion where  
Disclosure  
Confidential

If no Obliga-  
tion as to  
Secrecy there  
is Publication

(2) Cases where there has been an Actual Disclosure to an Individual Member of the Public.

There will also be publication if the design is disclosed to any individual member of the public who is not under any obligation to secrecy. Disclosure to merely one such person will be sufficient to constitute publication. In *Humpherson v. Syer* (4 R.P.C. 407),<sup>3</sup> Bowen, L.J., said (at page 413): "I put aside questions of public use, and treat this as a question of whether there has been a prior publication; that is, in other words, has this information been communicated to any member of the public, who was free in law or equity to use it as he pleased. Was Widmer a person to whom this communication has been made in a manner which left him free both in law and equity to do what he liked with the information. . . . You must take all the circumstances of the case, and ask yourself whether there was any confidential relation established between

<sup>1</sup> *Plimpton v. Malcolmson*, 3 Ch.D. 531. *Plimpton v. Spiller*, 6 Ch.D. 412.

<sup>2</sup> 3 R.P.C. 109.

<sup>3</sup> And see also the judgment of Fry, L.J., at p. 414.

the two parties—whether it was an implied term of the employment that the information should be kept by the shopman to himself, or whether he might afterwards, without any breach of good faith, use the matter, and use it as he choose."

Anticipation may be by the disclosure of an alleged previous design, or of the design itself before the date of its registration. But, in neither case, if the disclosure is, in fact, confidential, will there be publication.<sup>1</sup> Disclosure of the design itself is now dealt with by statute. By Sect. 55 of the Act—

The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Disclosure in  
Breach of  
Good Faith

It will be seen that provided the disclosure is confidential and involves an obligation as to secrecy, then, even though the obligation is broken, and the public thereby become possessed of the secret, though there is publication, the design will not be invalidated. A similar provision applies also in patent law.<sup>2</sup>

As to whether a given communication is confidential or not, it may be said that if the person to whom the disclosure is made has himself an interest in the design, then the disclosure is a confidential one.<sup>3</sup> In *Blank v.*

Meaning of  
"Confidential"

<sup>1</sup> *Morgan v. Seaward*, 1 W.P.C. 187. *Patterson v. The Gas Light & Coke Co.*, 1877, 3 A.C. 239. *Gadd and Mason v. The Mayor of Manchester*, 9 R.P.C. 516. *Nevill v. Bennett and Sons*, 15 R.P.C. 412.

<sup>2</sup> Sect. 41 (2).

<sup>3</sup> *Blank v. Footman Pretty & Co.*, 5 R.P.C. 653. *Heinrichs v. Bastendorff*, 10 R.P.C. 160.

*Footman Pretty & Co.* (5 R.P.C. 653), Blank, the proprietor of a design, before registering it, showed it to Hummel, a commission agent who had the sole right of selling Blank's goods in England. Hummel, therefore, had an interest in the design, and it was held that, this being so, the communication must be regarded as confidential, and such as not to amount to publication. Kekewich, J., said (at page 656): "Therefore Mr. Hummel has an interest in any design of Mr. Blank's in goods of this class, and although he is not a partner, or in any way a partner, he has that interest which makes him a person whom Mr. Blank would naturally consult before endeavouring to put any of that class of goods on the market. Mr. Blank, therefore, having sketched his design, shows it to Mr. Hummel. I cannot conceive that in doing so he would be publishing the design in any sense which could be placed on that word. Even if that relation had not existed between the two parties, I see no reason why a designer should not call in an expert, a gentleman whom he knows to be experienced in the trade likely to advise him well and whom he can trust, for the purpose of advising him before incurring extra expense and trouble." As regards the last part of the above judgment, it is obvious that it is perfectly permissible to call in any one, for instance an expert, for the purpose of consulting him, assuming that he is under an injunction as to secrecy. Mere private collaboration cannot amount to publication.<sup>1</sup>

Commercial  
Dealing not  
Confidential

If, however, the disclosure involves anything in the nature of commercial dealing, then it will not be considered confidential and will amount to publication.<sup>2</sup>

<sup>1</sup> *Nevill v. Bennett & Sons*, 15 R.P.C. 412.

<sup>2</sup> *Winfield & Son v. Snow Bros.*, 8 R.P.C. 15. *Nevill v. Bennett & Sons*, 15 R.P.C. 412. *Gunston v. Winox, Ltd.*, 38 R.P.C. 40.

In *Gunston v. Winox, Ltd.* (38 R.P.C. 40), Lord Sterndale, M.R., said (at page 52): "There is ample authority that the showing of a design to a person for the purpose of getting an order is *prima facie* a disclosure of that design." It would appear, however, from Sect. 55 of the Act that this does not apply to the case of a "first and confidential order for goods bearing a new or original textile design intended for registration." In general, however, if there has been anything in the nature of commercial dealing, such as an agreement to sell goods to which the design is applied, if in the course of that dealing the design is disclosed before it has been registered, there will be publication. And this will be so even though the goods are not, in fact, delivered till after the date of registration.<sup>1</sup>

#### PRIOR USER.

Besides publication in documents a design may also be anticipated by prior user. Prior user occurs where the design has been actually applied to articles before the date of registration of the design, and those articles have been used in such a way that the design becomes disclosed to the public.

##### (1) Cases of Disclosure to Specific Individuals.

If prior to the date of application for registration of the design there has been disclosure, either of the design itself or of a previous similar design, to any individual member of the public who is not under an obligation as to secrecy, there will be publication.

Thus, in *Humpherson v. Syer* (4 R.P.C. 407), which was a patent case, a machine made substantially

<sup>1</sup> *Winfield & Son v. Snow Bros.*, 8 R.P.C. 15.

according to the patent was shown to a person in Syer's shop. In *re Taylor's Patent* (13 R.P.C. 482), a stove similar to the patented article was used in the hall of a private house and shown to visitors. In both cases, there was held to be publication.

But if the disclosure is of a confidential nature, as, for instance, where it is to a person who has an interest in the design, or if the persons who see the user are under an obligation as to secrecy, then there is no publication.<sup>1</sup> Cases of this nature differ really in no way from similar cases of disclosure to individuals of prior documents, and all that was said under that head is, therefore, equally applicable to where the disclosure is of a prior user.

#### (2) Cases of Prior User in Public.

There will be publication if articles to which the design is applied are manufactured and used in such a way that members of the public might see them. It is not necessary that the prior user should have been sold,<sup>2</sup> although, if there is anything in the nature of profitable user by the owner of a design prior to registration, there will undoubtedly be publication.<sup>3</sup> Prior user thus means not user by the public, but user *in* public as opposed to user in private.<sup>4</sup> The classic cases of *Carpenter v. Smith* and *Stead v. Anderson* give a good idea of what amounts to prior user. In *Carpenter v. Smith* (1 W.P.C. 540), the patent was for a lock. The defendant produced a lock similar to the

<sup>1</sup> *Morgan v. Seaward*, 1 W.P.C. 187 at p. 194.

<sup>2</sup> *Betts v. Neilson*, L.R. 3 Ch. App. 429. *Gill v. Coutts & Sons and Cutler*, 13 R.P.C. 125.

<sup>3</sup> *In re Newall v. Elliott*, 4 C.B.N.S. 269. *Morgan and Seaward*, 1 W.P.C. 187. *Hoe & Co. v. Foster & Sons*, 16 R.P.C. 33.

<sup>4</sup> *Carpenter v. Smith*, 1 W.P.C. 540. *Croysdale v. Fisher*, 1 R.P.C. 17, at p. 21. *Gill v. Coutts & Sons and Cutler*, 13 R.P.C. 125.

plaintiff's which he proved to have been used for sixteen years on a gate adjoining a public road. It was held that there was publication. In *Stead v. Anderson* (1 W.P.C. 147) the patent was for making roads with wooden blocks. The alleged prior user was the use of wooden blocks to make a private carriage drive at the house of Sir William Worsley. Parke, B., said (at page 149): "As to the alleged user, the only evidence is that a similar pavement had previously been laid down at Sir W. Worsley's. . . . If the mode of forming and laying the blocks at Sir W. Worsley's had been precisely similar to the plaintiff's, that would have been a sufficient user to destroy the plaintiff's patent, though put in practice in a spot to which the public had not free access." Thus, if the user was in such a position and in such circumstances that some members of the public would be likely to have seen the design, there will be publication, even though it is not proved that any one actually did examine it.<sup>1</sup> User in a private house may, therefore, be publication.

Mere secret user, however, does not constitute publication. Private use in a workshop or anywhere where it is only seen by persons who are under an injunction as to secrecy is not publication. In *Young and Neilson v. Rosenthal & Co.* (1 R.P.C. 29), Grove, J., said (at page 32): "Mere private use in the closet, mere experimental working in a laboratory, without publishing the invention, but keeping it a secret with a view possibly to a patent being taken out, would not invalidate it. But, if it is once publicly used or sold in a shop, or publicly used in a carriage, or on the person, or in any such way, then the public have a right to it, and the patent is bad."

<sup>1</sup> *Gill v. Coutts and Sons and Cutler*, 13 R.P.C. 125 at p. 136.

The design must be used openly as *contra*—distinguished to being merely used in an experimental manner.<sup>1</sup> If the alleged prior user was merely an experiment<sup>2</sup> for instance, if certain articles were made up to see what they looked like with the design applied, to them, then this will not be an anticipation,<sup>3</sup> provided, of course, that there was no disclosure beyond what was absolutely necessary for the carrying out of the experiment.<sup>4</sup> The fact that it was abandoned is strong evidence that the user was only an experiment, and that the design never really came to be known to the public.<sup>5</sup> But if it was once properly used, the registration will be invalidated, even though the user did not continue down to the date of the registration, but was discontinued at an earlier date.<sup>6</sup>

**Abandoned Experiment**

It might, however, be otherwise if the user had been discontinued for a very long time indeed. In *Dick v. Tullis & Son* (13 R.P.C. 149), Lord Kyllachy said (at page 157): "And it may very well be that a patent, otherwise good, will not be invalidated by the discovery afterwards, that the same invention had been practised by, e.g., the ancient Romans. But an invention practised within the memory of living man, and by men still living is scarcely within that category."

### SPECIAL PROVISION AS TO EXHIBITIONS.

The proprietor of a design who wishes to exhibit his design at an exhibition before registration has been obtained for it, may do so without invalidating his

<sup>1</sup> *Cornish v. Keene*, 1 W.P.C. 501, at p. 508. *Betts v. Neilson*, L.R. 3 Ch. App. 429, at p. 436.

<sup>2</sup> *Houshill Company v. Neilson*, 1 W.P.C. 673, at p. 708.

<sup>3</sup> *Houshill Company v. Neilson*, 1 W.P.C. 673, at p. 708.

<sup>4</sup> *Newall v. Elliott*, 4 C.B.N.S. 269, at p. 294.

<sup>5</sup> *Houshill Company v. Neilson*, 1 W.P.C. 673, at p. 713. *Jones v. Pearce*, 1 W.P.C. 122.

<sup>6</sup> *Houshill Co. v. Neilson*, 1 W.P.C. 673.

design if the provisions of Sect. 59 are complied with. The section is as follows—

(1) The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof. Provided that—

(a) The exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Comptroller the prescribed notice of his intention to do so, and

(b) The application for registration is made before or within six months from the date of the opening of the exhibition.

The notice to the Comptroller must by No. 73 of the Designs Rules be made upon Form Designs No. 26. To identify the design on subsequent application to register it, the person lodging the form must supply a brief description of the design and also a sketch or specimen of it.<sup>1</sup>

By an Order in Council, Sect. 57 may be applied to any exhibition mentioned in the order in the same way as if it were an industrial or international exhibition so certified by the Board of Trade, and the Order may relieve the exhibitor of having to give notice to the Comptroller.<sup>2</sup>

<sup>1</sup> Rule 73.

<sup>2</sup> Sect. 57, sub-sect. 2.

## CHAPTER V

### APPLICATION FOR REGISTRATION

#### REGISTRATION OF THE DESIGN.

##### 1. Persons Who May Apply to Register a Design.

By Sect. 49 (1) of the Act, the Comptroller may, on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of the Act.

Sect. 93 defines Proprietor as follows—

(a) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is executed; and

(b) Where any person acquires the design or the right to apply the design to any article either exclusively of any other person or otherwise, means, in the respect and to the extent in, and to which, the design or right has been so acquired, the person by whom the design or right is so acquired; and

(c) In any other case means the author of the design; and where the property in, or the right to apply the design has devolved from the original proprietor upon any other person includes that other person.

(1) The  
Author

Primarily, then, it is the author of the design who is the proprietor, and who is entitled to apply for registration. The actual designer is the author,<sup>1</sup> i.e., the author is the person who conceives the idea or invents it, and gives expression to it by drawing. He may not work out the details of the design in its final form, but if he conceives the general idea, he will be

<sup>1</sup> *Lazarus v. Charles* L.R. 16 Eq. 117.

the author even though he directs someone else to carry it out.<sup>1</sup>

If the author is paid by someone else to invent the design, then the person who pays him is the proprietor and not the author.<sup>2</sup> Such person could apply for registration, but the author presumably could not do so.

(2) Person  
Hiring  
Author to  
Invent

According to subsection (b) anyone who acquires the design, whether exclusively or not, will be a proprietor. Anyone who acquired the design itself or part of it could, therefore, apply for registration of the design either in the position of sole proprietor or joint proprietor as the case might be.

(3) Assignee

Anyone who has acquired the right to apply the design, i.e., a manufacturer who has the right to make, would also appear to be a proprietor within the meaning of Sect. 93,<sup>3</sup> and could, therefore, apply to have the design registered (if it had not already been done, and provided, of course, that it had not been previously published in the United Kingdom), and in such a case he would presumably be entered upon the register as proprietor.

(4) Licensee

## 2. Procedure on Application to Register.

The applicant may make his application for registration through an agent. Almost all firms of patent agents undertake also the registration of designs. If the applicant desires to have his application made through an agent, he should appoint such agent by the signing of Form Designs No. 1, which should be sent to the Comptroller.<sup>4</sup>

Application  
may be  
by Agent

<sup>1</sup> *Pearson v. Morris Wilkinson & Co.*, 23 R.P.C. 738.

<sup>2</sup> *Lazarus v. Charles*, L.R. 16 Eq. 117.

<sup>3</sup> See *Jewitt v. Eckhardt*, 8 Ch.D. 404.

<sup>4</sup> Rule 12.

**Form for Application**

The application is generally made on Form Designs No. 2, which, when completed must be lodged at the office.<sup>1</sup> For forms see Appendix III. The form must be signed by the applicant or by his agent.<sup>2</sup> By Rule 8 a document lodged by a firm or partnership may be signed in the firm's name, or on behalf of the firm by a member thereof. A document lodged by a body corporate may be signed by a director, or by the secretary or other principal officer.

**Representations of Design Required**

Together with the application form must be sent three representations of the design;<sup>3</sup> for instance—drawings, or photographs of the design. Since the design is only that which can be seen by the eye, sectional drawings will only be admissible provided they do not illustrate features which cannot be seen in the finished article without dismemberment or severance. Instead of representations three specimens may be sent. When the design is to be applied to a set, each of the representations accompanying the application should show all the various arrangements in which it is proposed to apply the design to the articles included in the set.<sup>4</sup>

Where more figures than one are shown, they should, when possible, be on the same sheet, and each must be designated (e.g., perspective view, front view, side view).<sup>5</sup>

**Goods divided into Classes**

Goods to which the designs are to be applied are divided into classes. There are fifteen classes which are to be found set out in the Third Schedule to the Rules (see Appendix III, p. 198). The application must state the class in which the design is to be registered.<sup>6</sup> If there is any doubt as to which class a particular description of goods belongs, it will be determined by the Comptroller.<sup>7</sup>

<sup>1</sup> Rule 14.

<sup>5</sup> Rule 23.

<sup>2</sup> Rule 13.

<sup>6</sup> Rule 16.

<sup>3</sup> Rule 20.

<sup>7</sup> Rule 6, and see Sect. 49 (2).

<sup>4</sup> Rule 22.

Registration in any one class only enables the proprietor of the design to prevent others from applying his design to articles within that class, but does not enable him to prevent its application to articles in some other class in which the design is not registered. By Sect. 49 (2) of the Act, however, the same design may be registered in more than one class, in which case it will be protected for articles in all those classes in which it is registered. Where it is desired to register the same design in more than one class, a separate application shall be made in each case.<sup>1</sup>

## Registration in More Than One Class

The proprietor may, when he makes his original application, apply for registration in several classes or only in one class. If he only originally registers in one class, the fact of his prior registration will not prevent him from subsequently registering in other classes, though, of course, it would prevent any other person from so doing. This is provided by Sect. 50 (a) of the Act. Sect. 50 (b) also provides that the proprietor of a design in one class shall not be prevented from registering the same design in another class by reason only of the design having been published by application to articles of the class in which it is already registered.

A proviso is added to the section to the effect that the later registrations shall expire on the same date as the design first registered.

For applications in classes 13, 14, or 15, which comprise designs for textile goods and are, therefore, of particular importance in Manchester, Form Designs (Manchester) No. 1 is used for Classes 13 and 14, and Form Designs (Manchester) No. 2 for Class 15. Designs within these three classes may be registered either at the Patent Office or at the Designs Office at Manchester.

**Special Requirements for Applications in Classes 13, 14 and 15**

1 Rule 16.

(address, 51 Regent House, Cannon Street, Manchester) at the option of the applicant, and four representations or specimens are required instead of only three.

And for  
Applications  
in Class 9  
for Lace

Application  
Must State  
Article to  
which Design  
is Applied

Statement of  
Novelty

An application for a design for lace in Class 9 is made on Designs Form No. 2.

The application must state the article to which the design is applied, and also, if the Comptroller requires, the purpose for which the article is used, and the predominating material of which it is made.

By Rule 18, the applicant may, and shall, if required by the Comptroller in any case so to do, endorse on the application and each of the representations a brief statement of the novelty he claims for his design.

The statement of novelty is of considerable importance, as it may have a very material bearing in an action for infringement upon the interpretation which the Court will place upon the design. The question of whether to have such a statement and, if so, its drafting are, therefore, matters which will require very careful attention.

The object of having a statement of novelty is to call attention to any special novel feature or features (if any) upon which the author particularly desires to lay stress, as forming the kernel of his idea.

It defines the ambit or scope of the monopoly, and is, therefore, to a certain extent analogous to a claim in the specification of a patent.

If there is no statement of novelty, the design will be taken to be for the shape or pattern as a whole,<sup>1</sup> and it will not be possible to prevent a person taking any special feature of the design and copying it, unless he has taken the thing as a whole.<sup>2</sup>

<sup>1</sup> *Wilson v. Chalco, Ltd.*, 39 R.P.C. 252.

<sup>2</sup> *Holdsworth v. M'Crea*, L.R. 2 H.L. 380. *Jones and Attwood v. The National Radiator Co., Ltd.*, 45 R.P.C. 71.

In *Holdsworth v. M'Crea* (L.R. 2 H.L. 380), Lord Westbury said: "The only thing which it is here necessary to point out, as well for warning to inventors as for the protection of the public, is this, that if a design, as exhibited in a pattern, is filed and registered by an inventor, without any farther limitation or description than that which is given by the design itself, it protects the entire thing, and the entire thing only, and the protection cannot, at pleasure, be made applicable, one day to the entirety, and another day to the separate integral parts or elements of the entire design. It must be considered that the protection of the statute is invoked for the entire thing that appears upon the register and is applicable to nothing but the exact copy of the thing so registered."

If, however, a special feature is indicated on the statement of novelty as being that to which the proprietor particularly assigns value, then it might well be that any one copying that feature would be guilty of infringement, although apart from that feature, he had not come so near the registered design as a whole as to be an infringer.<sup>1</sup> But it must be remembered that if an applicant does decide to lodge a statement of novelty in which he lays claim to some particular feature, nothing which did not contain that feature could ever possibly be held to be an infringement of his registered design.

In *Phillips v. Harbro' Rubber Co.* (37 R.P.C. 233), Lord Moulton indicated how essential he thought it was that there should be a statement of the novelty, which the applicant claimed, attached to the Certificate

<sup>1</sup> See *Sackett and Barnes v. Clozenberg*, 27 R.P.C. 104, where Neville, J., said, at p. 108: "It appears to me that if it is desired to protect a particular feature in the general design of a sideboard, it must, under the Act of 1883, be registered or claimed separately."

of Registration. He said, (at page 241) : "This strikingly illustrates, as I have said, the difficulty of the task which is imposed upon a Court dealing with a registered design when the person registering it has not availed *himself of his right to file with his application a statement of the matters which, he claims, constitute its novelty.* Your Lordships might easily have failed to observe this feature, and to give it its true importance, and grave injustice might have been done to the public by treating heel pieces which do not possess this feature as being within the ambit of the registered design. Under existing legislation, the Comptroller has the right to require such a statement to be lodged, and my experience of the present and other like cases leads me to hope that he will freely avail himself of this power in any case where doubt is likely to arise. Otherwise, the only safe course for the Court to take will be to insist on absolute identity between the infringement and the registered design."

Discretion of  
Comptroller

### 3. OBJECTIONS BY COMPTROLLER.

The Comptroller may object to register a design, and, if so, he will send his objections to the applicant in writing. By Sect. 49 (3) of the Act—

The Comptroller may, if he thinks fit, refuse to register any design presented to him for registration. . . .

It would, therefore, appear that the Comptroller may refuse upon any ground which he likes. The usual reason for refusal would, of course, be identity or substantial identity with a design already registered, and this ground is specifically mentioned in Sect. 56. Sect. 49 is, however, in no way tied down to such a ground, and is far wider in scope. Thus, the Comptroller

might refuse registration on the ground of any publication of a substantially similar design, no matter in what manner it had come to his notice. But he is not entitled to refuse an application for registration on the *ground that an application for a similar design had previously been refused*<sup>1</sup> for novelty is determined by publication, and there would be no publication in such a case, as rejected or abandoned designs are kept secret.<sup>1</sup>

After the applicant has received the objections of the Comptroller to register, he has one month in which he may apply to the Comptroller for a hearing. If he does not apply within the month he will be deemed to have withdrawn his application.<sup>2</sup> If at the hearing the applicant fails to convince the Comptroller to remove his objections, and the Comptroller still refuses to register the design, the applicant may appeal to the Court.<sup>3</sup> If he decides to so appeal he should, within one month, apply upon Designs Form No. 7, requiring the Comptroller to state the grounds of his decision and the materials used by him to arrive at it.<sup>4</sup> The appeal to the Court is by petition and not motion.<sup>5</sup> The "Court" will be the special judge selected by the Lord Chancellor to hear such appeals from the Comptroller.<sup>6</sup> *In re Game Balls Co., Ltd.'s Application* (45 R.P.C. 26), it was held that unless it can be shown that the Comptroller has been proceeding upon some wrong principle, he must be the "prima facie" judge of novelty, and as he had done nothing wrong in principle the appeal was dismissed.

As regards the costs of the appeal, there is uniformity of practice with trade mark cases,<sup>7</sup> and it would appear

<sup>1</sup> *In re Brampton's Designs*, 43 R.P.C. 55. And see Section 69 (2).

<sup>2</sup> Rule 30.

<sup>5</sup> O. 53a, r. 5 R.S.C.

<sup>3</sup> Sect. 49 (3) of the Act. <sup>6</sup> Sect. 92 (2) of the Act.

<sup>4</sup> Rule 31.

<sup>7</sup> *In re Brampton's Designs*, 43 R.P.C. 55.

that generally speaking, unless the circumstances are very exceptional, the costs of the Comptroller must be borne by the applicant even though the applicant succeeds in the appeal.<sup>1</sup> There is no appeal from the Court.

#### 4. Period of Copyright.

By Sect. 49 (5), a design when registered shall be registered as of the date of the application for registration. Registration gives copyright for a period of five years from the date of registration.<sup>2</sup> The proprietor of the design can, if he applies before the expiration of the five years, and on payment of the requisite fee, obtain an extension of his copyright for another five years.<sup>3</sup> Application should be upon Form Designs No. 9.<sup>4</sup> Similarly, by application on Form Designs No. 10, a further extension of five years, giving a total protection of fifteen years, may be obtained.

#### 5. The Register of Designs.

At the Patent Office is kept a book called the Register of Designs, in which are to be entered the names and addresses of the proprietors of the designs, and notices of all assignments licences, etc.<sup>5</sup> By Rule 38, where a person becomes entitled by assignment, transmission, or other operation of law, to the copyright in a registered design, or as mortgagee, licensee or otherwise to any interest in a design, he may, conjointly with the registered proprietor, make application to the Comptroller on Form Designs No. 12 or, in the case of a design registered in Class 9 on Form Designs No. 13 to register his title. He may make the application by

<sup>1</sup> *In re Brampton's Designs*, 43 R.P.C. 55.

<sup>2</sup> Sect. 53 (a).

<sup>3</sup> Sect. 53 (b).

<sup>4</sup> Rule 35.

<sup>5</sup> Sect. 52.

himself without the registered proprietor in which case he should use Form Designs No. 14.<sup>1</sup>

It is important that an assignee should register his title, as otherwise he will be prevented from bringing any action to enforce his rights.<sup>2</sup> Where a registered proprietor alters his address he must notify the Comptroller at once by applying on Form Designs No. 17 to have his address altered in the Register.<sup>3</sup> Trusts, whether expressed, implied, or constructive, are not to be entered on the register.<sup>4</sup>

The register is always open to the public, and may be inspected by them, and certified copies, sealed with the seal of the Patent Office, of any entry in the register will be obtainable by any one paying the prescribed fee.<sup>5</sup>

#### 6. Inspection of the Design as Registered.

When a design is registered for a period of two years, or in the case of a design in Classes 13, 14, or 15, for five years, the design as registered is kept secret, and is not open to inspection by the public.<sup>6</sup> During this period, however, it may be inspected by the following persons—<sup>7</sup>

- (a) Its proprietor.
- (b) A person authorized in writing by him.
- (c) A person authorized by the Comptroller or by the Court.
- (d) By a person who has been refused registration of a design on the ground of identity with the design already registered.

But even these persons are not allowed to make a copy of the design or of any part of it. After the

<sup>1</sup> Rule 39.

<sup>5</sup> Sect. 67.

<sup>2</sup> See Chapter VII, *infra*.

<sup>6</sup> Sect. 56 and Rule 65.

<sup>3</sup> Rule 46.

<sup>7</sup> Sect. 56.

<sup>4</sup> Sect. 66.

expiration of the two years, or in the case of designs in Classes 13, 14, and 15 five years, the designs are then open to inspection by any one, and copies of them may be taken.

#### 7. Information as to Existence of Copyright.

Any one who desires to know whether a particular registration is still in existence, may, on giving the Comptroller sufficient information to enable him to identify the design, request him to discover whether such registration is still in force, and, if so, in what classes, and also the date of the registration, and the name and address of the registered proprietor.<sup>1</sup> He should apply to the Comptroller on Form Designs No. 20, if he knows the number of the registration, or on Form No. 21 if he does not, stating all the information he can supply to enable the Comptroller to identify the design in question.<sup>2</sup>

If anyone desiring to manufacture a particular article wishes to know whether there is any registered design in existence of which his article might constitute an infringement, he may apply to the Comptroller on Form Designs No. 22 for a search to be made among the registered designs.

His form should be accompanied by the design according to which he desires to manufacture, which design should be in duplicate.

The Comptroller will then, as the result of his search, state whether there is any registered design which is identical with, or closely resembling the design in question, existent in the particular class of goods indicated.<sup>3</sup>

Search  
Among  
Registered  
Designs  
(Rule 56)

<sup>1</sup> Sect. 57.      <sup>2</sup> Rule 55.      <sup>3</sup> Rule 56.

## CHAPTER VI

### INFRINGEMENT

THE proprietor of a registered design has copyright in his design for five years from the date of registration, and this period can be extended to fifteen years on payment of the requisite renewal fees. The proprietor has the right during this period to prevent others from copying his design, and using it without his leave or licence, and he can enforce his rights by means of an action for infringement.

The Right  
to Sue for  
Infringement

By Sect. 93 of the Act, copyright means the exclusive right to apply a design to any article in any class in which the design is registered. Thus, the copyright covers only the application of the design to articles in a class in which the design is registered. It is, therefore, only possible to sue for infringement successfully in cases where the alleged infringing design has been applied to articles which belong to the same class (according to Schedule 3 of the Designs Rules) as that of the registered design. If the alleged infringing design is applied only to articles in some other class, in which the proprietor does not happen to have his design registered, then there will be no infringement. Thus, if a particular pattern is registered in Class 7 (paper hangings), but is not registered in Class 14 (printed or woven designs on handkerchiefs and shawls), then there will be no infringement in placing that design upon articles in Class 14, namely upon handkerchiefs or shawls.

Applies Only  
to Articles in  
Class in which  
Design  
Registered

The statutory right of the proprietor of a registered design to sue for and obtain relief for its infringement is contained in Sect. 60 of the Act, which is as follows—

(i) During the existence of copyright in any design, it shall not be lawful for any person—

(a) For the purposes of sale to apply or cause to be applied to any article in any class in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor to publish or expose or cause to be published or exposed for sale that article.

There is a second sub-section which deals with the form of relief which the registered proprietor of a design which has been infringed can obtain for its infringement. The relief so obtainable includes, a penalty or damages, and an injunction, and will be considered in Chapter VII under the heading "Action for Infringement."

#### DISTINCTION BETWEEN CASES WHERE INFRINGEMENT BY MANUFACTURER AND BY MERE VENDOR.

On considering sub-section (i) it will be seen that a distinction is drawn between two types of infringers. (a) Is dealing with the case of manufacturers, i.e., people who actually apply the design to the article. (b) Is dealing with people who are mere vendors of articles to which the design has been applied.

In order to succeed in an action for infringement against a manufacturer it is not necessary to show that the defendant knew that what he was doing was an infringement.<sup>1</sup>

If, however, the action is against a mere vendor, who has had nothing to do with the manufacture of the article, or the application of the design thereto,

Need not  
Prove  
Knowledge  
Against  
Manufacturer

But Must  
Against Mere  
Vendor

<sup>1</sup> *Banstead v. Dempster Moore & Co., Ltd.*, 25 R.P.C. 121.

then in order to succeed the plaintiff must show that the defendant had knowledge of the fact that what he was doing was an infringement.<sup>1</sup> But, even if the action is against a manufacturer, it would appear from the section that it must be shown that he applied the design to the article for the purposes of sale, so that if he merely makes the article and applies the design to it for his own use, there will be no infringement.<sup>2</sup>

If the defendant is a vendor, though it must be shown that he knew that what he was doing was an infringement, express notice from the proprietor of the design to the defendant to that effect is not necessary, it being immaterial from what source his knowledge is derived. If he had knowledge at the time of the sale or exposure for sale, then he is liable. If he had no knowledge at that time, he is not. If originally he had no knowledge and is then subsequently given notice, any exposure for sale or sale after such notice will be an infringement. The notice must, however, be intelligible so that he can understand what the design is that he is alleged to be infringing.

In *Smith v. Lewis Roberts & Co.* (5 R.P.C. 611), Bristowe, V.C., said (at page 615): "In order to bring the case within the Act of Parliament, I think it must necessarily be shown that the retail dealer knew at the time of the exposition for sale that the design applied to the goods exposed for sale was applied without the consent of the registered proprietor. Now, surely it is necessary that the person giving the first notice should give such a notice, if it is in writing at all, as to be intelligible to the person charged, so that he may know what is alleged against him. . . . He

<sup>1</sup> *Smith v. Lewis Roberts & Co.*, 5 R.P.C. 611.

<sup>2</sup> On this point see, however, the case of *M'Crea v. Holdsworth*, 2 De G. & Sm. 496.

must have the particular thing explained to him which it is claimed has the right of registration."

### WHAT AMOUNTS TO INFRINGEMENT.

The question of whether the alleged infringing design is or is not an infringement of the registered design is a question of fact, and like the question of novelty can only be decided by the eye,<sup>1</sup> the function or object which the article may fulfil being immaterial.<sup>2</sup> The question is this: Has the alleged infringement substantially the same appearance as the registered design,<sup>3</sup> and the registered design for this purpose is the picture as shown upon the Certificate of Registration.<sup>4</sup> It is necessary to see what the essence of the design is,<sup>5</sup> and if its essential details have not been taken, there will be no infringement.<sup>6</sup> As to whether any differences between the alleged infringement and the registered design are or are not material differences, the same considerations will apply as in determining whether the registered design is or is not novel as compared with the previous designs. Thus, the alleged infringement and the registered design should be looked

<sup>1</sup> *Holdsworth v. M'Crea*, L.R. 2 H.L. 380. *Hecla Foundry Co. v. Walker, Hunter & Co.*, 6 R.P.C. 554, at p. 559. *Staples v. Warwick*, 23 R.P.C. 609. *Hothersall v. Moore*, 9 R.P.C. 27.

<sup>2</sup> *Leatheries, Ltd. v. Lycett Saddle and Motor Accessories Co., Ltd.*, 26 R.P.C. 166.

<sup>3</sup> *Hecla Foundry Co. v. Walker, Hunter & Co.*, 6 R.P.C. 554, at p. 559. *Manchester v. Umfreville & Son*, 24 R.P.C. 782, at p. 788. And see *Nevill v. Bennett & Sons*, 15 R.P.C. 412 at p. 417, where Hall, V.C., said that you must compare the registered design and the alleged infringement and decide whether or not the general effect is the same.

<sup>4</sup> *In re Rollason's Registered Design*, 15 R.P.C. 441 at p. 445, and 14 R.P.C. 909 at p. 912. *Jackson v. Testar*, 36 R.P.C. 289.

<sup>5</sup> *Staples v. Warwick*, 23 R.P.C. 609.

<sup>6</sup> *Gramophone Co., Ltd. v. Magazine Holder Co.*, 27 R.P.C. 152 at p. 157. And see *Barran v. Lomas*, 28 W.R. 973, where it was said by Jessel, M.R., that mere slight variations from the registered design will not take the defendant out of infringement.

at not only together, but apart, and at different times, and at a little distance off.<sup>1</sup> Thus, also, the evidence of experts in the trade is admissible.

In determining the ambit of a design the state of knowledge at the date of its registration is of importance.<sup>2</sup> If only small differences separate the registered design from what has gone before, then equally small differences between the alleged infringement and the registered design will be held to be sufficient to avoid infringement.<sup>3</sup>

State of  
Knowledge  
Prior to  
Registration  
Relevant

In *Simmons v. Mathieson & Co., Ltd.*, (28 R.P.C. 113), Swinfen Eady, J., said (at page 120): ". . . and I think under those circumstances, seeing what the defendants have done in producing something independently, something bearing some resemblance to it, but I think differing as much from the plaintiff's as the plaintiff's differs from any of its predecessors, it would be impossible to hold that there was sufficient novelty in the plaintiff's design to sustain his registration as a new and original design, without at the same time deciding that the defendants' is so different that it cannot be held to infringe. I think, therefore, on the question of infringement, that the defendant has not infringed the plaintiff's registered design." And, on appeal, Fletcher Moulton, L.J., as he then was, said (28 R.P.C., at page 496): "The only possible way in which this registration could be good would be to magnify the importance of minute details so as to give it novelty or originality, and then if you magnify the

<sup>1</sup> *Grafton v. Watson*, 50 L.T.N.S. 424. *Wallpaper Manufacturers, Ltd. v. Derby Paper Staining Co.*, 42 R.P.C. 429.

<sup>2</sup> *Hecla Foundry Co. v. Walker, Hunter & Co.*, 6 R.P.C. 554. at p. 559. *Gramophone Co., Ltd. v. Magazine Holder Co.*, 28 R.P.C. 226.

<sup>3</sup> *Simmons v. Mathieson & Co., Ltd.*, 28 R.P.C. 486, at p. 490; and see *in re Plackett's Design*, 9 R.P.C. 436.

importance of small details for that purpose, you must also keep them on that scale for the purpose of deciding whether there is an infringement."

And, in *Jackson v. Testar* (36 R.P.C. 289), Astbury, J., said (at page 295) : " If people will take out designs such as this, for articles of this character, they can only expect to prevent infringement when the article complained of is in substance identical, and I am of opinion that there are sufficient differences between the two designs to prevent the one being an infringement of the other."

Thus, it may be said that a registered design which is possessed of substantial novelty and originality will have a broader reading given to the monopoly which it affords, than will a design which is barely novel or original. In the latter case, where the novelty is small, the Court may refuse to hold anything to be an infringement, unless it is almost exactly the same as the registered design.<sup>1</sup>

This was made particularly clear in the case of *Negretti and Zambra v. W. F. Stanley & Co., Ltd.* (42 R.P.C. 358), where Astbury, J., said (at page 365) : " In a design of this very humble character, where the design itself is very close to designs which have gone before, as Lord Halsbury said in the Gramophone case,<sup>2</sup> " the plaintiffs, in order to succeed in infringement, must show that the article complained of is an exact reproduction of the plaintiffs' design, and that any difference, however trifling or unsubstantial, will, or may, protect it from infringement."

<sup>1</sup> *Gramophone Co., Ltd. v. Magazine Holder Co.*, 28 R.P.C. 226. *Repetition Woodwork Co., Ltd. v. Hilton and Briggs*, 41 R.P.C. 449. *Negretti and Zambra v. Stanley & Co., Ltd.*, 42 R.P.C. 358.

<sup>2</sup> *Gramophone Co., Ltd. v. Magazine Holder Co.*, 28 R.P.C. 221, at p. 226.

It is submitted that the above is the correct interpretation of the Gramophone case, the sense of which would otherwise be extremely hard to understand. For, if Lord Halsbury had meant that *no* design could be infringed, except by an exact copy, registration would be completely valueless.

Where the defendant has taken only that part of the registered design which was old, and has not taken that which is new, there will be no infringement.<sup>1</sup> Thus, where the registered design differs from what has gone before only by some one particular feature, then unless the alleged infringement embodies that feature, it cannot possibly be an infringement.<sup>2</sup> In *Walker & Co. v. Scott & Co., Ltd.* (9 R.P.C. 482), where the design was for an oil can, which differed from previous oil cans only in that it had rounded edges instead of sharp edges, an oil can the edges of which were not round was held not to be an infringement. So, also, where the design as registered is accompanied by a statement of novelty, setting out the particular feature which is claimed to be new, nothing would be an infringement, unless it contained the feature so claimed. For discussion as to the desirability, etc., of having such a statement, see Chapter V, *supra*.

As pointed out in that chapter, where there is no claim to any particular feature or features, then the registration is for the thing as a whole, and no other design will be an infringement unless it is substantially

If no Claim  
Design is  
for Whole

<sup>1</sup> *Staples v. Warwick*, 23 R.P.C. 609. See also *Gramophone Co., Ltd. v. Magazine Holder Co.*, 27 R.P.C. 152, at p. 159, and *Repetition Woodwork Co., Ltd. v. Hilton and Briggs*, 41 R.P.C. 449.

<sup>2</sup> *Staples v. Warwick*, 23 R.P.C. 609. *Walker & Co. v. Scott & Co., Ltd.*, 9 R.P.C. 482.

the same as the registered design looked at as a whole.<sup>1</sup> In *Jones and Attwood v. National Radiator Co., Ltd.*, (45 R.P.C. 71), Tomlin, J., said (at p. 83) : " Further, they have not claimed novelty or originality in respect of any special feature. It is in the shape or configuration of the boiler, as a whole, as shown in the registered representation, that the novelty or originality rests, and I do not think that they can successfully allege infringement because any particular feature is reproduced in the article complained of. They must rest upon imitation in respect of the shape or configuration of the whole."

If it is desired to protect any particular feature or features, then they should be specifically claimed.<sup>2</sup>

Where the article is registered both for shape and pattern, there may be infringement of the design for shape, although there is no infringement of the design for the pattern, and vice versa.<sup>3</sup> Where the registration is in general terms, the proprietor may have the benefit of all the novelty in his design, and need not be restricted either to shape or pattern.<sup>4</sup> Where, however, the applicant has limited himself either solely to shape or solely to pattern, though he is in no way compelled to do so in the first place, yet if he does so, it would appear that his protection must be definitely limited to matters falling within whichever of these terms is in question.<sup>5</sup>

#### INFRINGEMENT OF SET.

In *Stephenson, Blake & Co. v. Grant, Legros & Co.*,

<sup>1</sup> *Holdsworth v. M'Crea*, L.R. 2 H.L. 380 at p. 388. *Sackett and Barnes v. Clozenberg*, 27 R.P.C. 104, at p. 108. *Wilson v. Chalco, Ltd.*, 39 R.P.C. 252, at p. 256. *Jones and Attwood v. National Radiator Co., Ltd.*, 45 R.P.C. 71 at p. 83.

<sup>2</sup> *Sackett and Barnes v. Clozenberg*, 27 R.P.C. 104 at p. 108.

<sup>3</sup> *Pearson v. Morris, Wilkinson & Co.*, 23 R.P.C. 738, though see *Barran v. Lomas*, 28 W.R. 973, at p. 974.

<sup>4</sup> *Manchester v. Umfreville & Son*, 24 R.P.C. 782.

<sup>5</sup> *In re Rollason's Registered Design*, 14 R.P.C. 909, at p. 916.

*Ltd.* (33 R.P.C. 406), the design was for a fount of type. The opinion was expressed by Eve, J., that on the assumption that a design for a fount of type was registrable, there would be no infringement unless the letters were reproduced in exactly the same order as that in which they appeared in the Certificate of Registration, i.e., in alphabetical order. Though it cannot be considered as settled law, the opinion being really in the nature of a dictum, as it was in answer to an abstract question on a point of law, which the Court of Appeal afterwards held should never have been put, nevertheless, there being no other authority on the point, it is undoubtedly entitled to due consideration.

#### DISTINCTION BETWEEN OBVIOUS AND FRAUDULENT IMITATION.

Sect. 60 by sub-section (1) (a) makes it unlawful to apply "the design or any fraudulent or obvious imitation thereof," and, again, sub-section (1) (b) prohibits the selling or exposing for sale of any article to which "the design or any fraudulent or obvious imitation thereof has been applied."

An obvious imitation is a design which strikes the eye as being substantially the same as the registered design, though it is not absolutely identical.<sup>1</sup> It has been held that there is a definite distinction between the case where that which has been applied is the same design as that registered or an obvious imitation thereof, and the case where there has been a fraudulent imitation.<sup>2</sup> An infringement may be both an obvious and a fraudulent imitation,<sup>3</sup> but the fact that it is not

Obvious  
Imitation

<sup>1</sup> *Rose v. Pickavant & Co., Ltd.*, 40 R.P.C. 332.

<sup>2</sup> *Sherwood and Cotton v. Decorative Art Tile Co.*, 4 R.P.C. 207.

<sup>3</sup> *Wallpaper Manufacturers, Ltd. v. Derby Paper Staining Co.*, 42 R.P.C. 449.

an obvious imitation does not necessarily mean that it is not a fraudulent imitation. A design, which is not sufficiently close to the registered design to be an obvious imitation of it, may still be held to be an infringement on the ground that it is a fraudulent imitation.<sup>1</sup> In other words, where it is shown that the defendant has been guilty of fraudulent imitation of the plaintiff's design, greater differences from the registered design will be held to constitute infringement than would otherwise be the case.<sup>2</sup> As to what amounts to fraudulent imitation, fraudulent imitation means copying, i.e., an actual conscious imitation (as opposed to an imitation which is unconscious) of the registered design.<sup>3</sup> In *Grafton v. Watson* (51 L.T.N.S. 141), Cotton, L.J., said (at p. 144): "Fraudulent imitation, to my mind, must mean this: If a man, knowing that the pattern is a registered design, goes and imitates it, and does that without any sufficient invention on his own part, that would be a fraudulent imitation. . . ."

In *Sherwood and Cotton v. Decorative Art Tile Co.* (4 R.P.C. 207), Manisty, J., said (at page 210): "I think the word was introduced for the very purpose of meeting the case of an imitation, not an obvious imitation, but an imitation varied for the purpose really of perpetrating what is a legal fraud; for instance, having before your mind and before your eye the design of another, and introducing into your design some differences in order if possible to avoid coming within the Act of Parliament."

<sup>1</sup> *Sherwood and Cotton v. Decorative Art Tile Co.*, 4 R.P.C. 207. *Rose v. Pickavant & Co., Ltd.*, 40 R.P.C. 332.

<sup>2</sup> *Rose v. Pickavant & Co., Ltd.*, 40 R.P.C. 332.

<sup>3</sup> *Barran v. Lomas*, 28 W.R. 973, at p. 975. *Grafton v. Watson*, 51 L.T.N.S. 141, at p. 144. *Sherwood and Cotton v. Decorative Art Tile Co.*, 4 R.P.C. 207. *Pugh v. Riley Cycle Co., Ltd.*, 29 R.P.C. 196, at p. 202. *Rose v. Pickavant & Co., Ltd.*, 42 R.P.C. 332.

And, in the more recent case of *Rose v. J. W. Pickavant & Co., Ltd.* (42 R.P.C. 332), Romer, J., said (at page 332): "It seems to be clear that the legislature, in using the phrase 'fraudulent imitation' is contemplating an imitation that is fraudulent without being obvious. It would, therefore, seem to be contemplating a case in which the differences between the article and the design are obvious, and in which recourse must be had to extrinsic evidence to establish the fact of deliberate copying. In such a case, the existence of comparatively unimportant differences from the design sufficient to prevent the imitation being obvious is not a fact of which the imitator can avail himself, and may, indeed, be one of the elements of the imitator's fraud."

Thus, the fact that he introduced slight variations in order to avoid too great a resemblance to the registered design will be no excuse for a defendant who has consciously imitated the registered design. If it is shown that the defendant had knowledge of the registered design and what it looked like at the time he was making the alleged infringement, then the burden of proof will be upon him to show that he did not, in fact, copy the registered design.<sup>1</sup>

#### DOING ANYTHING TO ENABLE AN INFRINGEMENT TO BE COMMITTED.

By Sect. 60 (1) (a) it will be seen that not only is it unlawful to apply the design, but that it is also unlawful "to do anything with a view to enable the design to be so applied." These words were first introduced by the Act of 1907. Before then there was no infringement unless the actual application took place

<sup>1</sup> *Grafton v. Watson*, 51 L.T.N.S. 141, at p. 144.

in this country.<sup>1</sup> Now, however, any act which will enable an infringement to be committed, provided it is done in this country, will be actionable. In *Haddon v. Bannerman* (29 R.P.C. 611), the plaintiffs were proprietors of a registered design for a face of type. The defendants had in England made matrices by which a design like that of the plaintiffs could be applied to articles. The matrices were, however, to be shipped to India, so that the actual application of the design would take place there, and not in England. It was held by Warrington, J., that the act of making the matrices was comprehended by the words "to do anything with a view to enable the design to be so applied," and that there had, therefore, been an act of infringement in this country of the registered design.

<sup>1</sup> *Potter & Co. v. Braco de Prata Printing Co., Ltd.*, 8 R.P.C. 218.

## CHAPTER VII

### ACTION FOR INFRINGEMENT

#### I. PARTIES.

##### (a) Plaintiff.

IT is the right of the registered proprietor of the design to bring an action for its infringement.<sup>1</sup> The registered proprietor is the person whose name at the time in question is entered upon the register as proprietor. This may be the author of the design, or some one by whom he was paid to invent, or an assignee, or assignees, or a licensee if he is the person actually registered as the proprietor. A mere licensee, however, whose name is on the register as licensee and not as proprietor, is not the registered proprietor, and cannot, therefore, sue upon his own account without joining the registered proprietor. Generally speaking, unless he happened to have applied for the registration himself under Sects. 49 and 93, in which case he would be registered as proprietor, a licensee will simply be entered upon the register as licensee, and not as the proprietor. The mere fact that his name is so entered upon the register as licensee does not make him the registered proprietor. In general, then, he would appear to be in the same position as a licensee under a patent. If he wishes to bring an action for infringement, he should get the registered proprietor to join with him as plaintiff, or if the registered proprietor refuses to do so, he should join him as defendant. The same would apply to any one else wishing to bring an action who was not registered as proprietor, as, for instance, an equitable assignee or a mortgagee. If there

Plaintiff  
Must be  
Registered  
Proprietor

<sup>1</sup> See Sect. 60.

are several owners of a design, all of them should be registered, and each of them if so registered could bring an action without joining the others.<sup>1</sup> But, in order to be able to sue, the name of the proprietor must actually have been entered upon the register as such.<sup>2</sup>

In *Winkle & Co., Ltd. v. Gent & Son* (31 R.P.C. 17) a firm who owned a registered design had turned itself into a limited company. The plaintiffs were the company and were, therefore, assignees of the design, but the assignment from the firm to the company had not been registered. They had to amend by adding the firm, which was registered as proprietor, but were allowed to do so unconditionally.

#### (b) Defendant.

Any one who has infringed the design may be sued, whether it be the actual infringer in fact, as in the case of a workman, or whether it be the employer of that workman. Both principal and agent are separately liable.

### 2. THE COURT.

Design actions are usually brought in the Chancery Division of the High Court, the procedure in Chancery being particularly suitable to cases of this description. If desired, however, there is no objection to their being heard in the King's Bench Division, either with or without a jury. The Court of Chancery of the County Palatine of Lancaster is in the same position as the Chancery Division of the High Court, and, therefore, has jurisdiction to try patent and design actions, though it would appear to have no power to rectify

<sup>1</sup>Sects. 60 and 93.

<sup>2</sup>*Wooley v. Broad*, 9 R.P.C. 208. *Winkle & Co., Ltd. v. Gent & Son*, 31 R.P.C. 17.

the register.<sup>1</sup> It would appear that County Courts have no jurisdiction to hear a design case; with regard to patents they certainly have no such jurisdiction,<sup>2</sup> a patent being a "franchise" within the meaning of Sect. 56 of the County Courts Act, 1888, and if a patent is a franchise, a design is probably also one.

### 3. WRIT.

The relief claimed is usually—

- (1) An injunction. (2) Damages.
- (3) Delivery up of all infringing articles.
- (4) Costs.

As an alternative to damages, the plaintiff may claim a penalty which is limited to £50 for each offence, and may not exceed £100 in all. Nowadays, however, damages are almost always asked for and not the penalty. For further details, see page 87 *et seq.*, and for form of endorsement on writ, Appendix I.

### 4. INTERLOCUTORY INJUNCTION.

It is open to the plaintiff at any time after the writ has been issued to move for an interlocutory injunction to prevent the defendant infringing his design between then and the date of the trial. In *Smith v. Grigg, Ltd.* (41 R.P.C. 149) it was held that the same principles apply to the granting of an interlocutory injunction in the case of a design as are applicable in the case of a patent. The plaintiff must show that he has a *prima facie* case, both that his design is valid, and that it has been infringed by the defendant.<sup>3</sup> The

Same  
Principle  
as in Patents

<sup>1</sup> *British Insulated and Helsby Cables, Ltd. v. London Electric Wire Co. and Smiths*, 30 R.P.C. 620.

<sup>2</sup> *Reg. v. Judge of County Court of Halifax and Priestley Bairstow*, 8 R.P.C. 338.

<sup>3</sup> *Grafton v. Watson*, 51 L.T.N.S. 141. *Smith v. Grigg, Ltd.*, 41 R.P.C. 149. *Bonnella v. Espir*, 43 R.P.C. 159.

mere fact that the plaintiff is in possession of a patent or of a registered design is not of itself necessarily *prima facie* evidence of validity. On the contrary, where it appears that the design has only recently been registered, and where it appears that there is a substantial issue to be tried, an interlocutory injunction will not be granted.<sup>1</sup> And, in fact, in a case where the validity of a design is doubtful,<sup>2</sup> or is in any way disputed<sup>3</sup> it is improbable that an interlocutory injunction would ever be granted.

In *Smith v. Grigg, Ltd.* (41 R.P.C. 149) Scrutton, L.J., said (at page 153): "There is in patent cases a well recognized rule . . . that where the patent which you are seeking to enforce is a recent patent, an interlocutory injunction is not granted where there is a genuine case to be decided. Mr. Justice Parker put it very shortly in *Trautner v. Patmore* reported in 29 R.P.C. 60, at page 63. I cannot grant an interim injunction. It is very unusual where the patent has not been established."

Where, however, there has been undisturbed enjoyment of the monopoly for a substantial period of time, i.e., for many years, during which its validity has not been disputed, this is fair *prima facie* evidence of validity, and an injunction may be granted<sup>4</sup> provided that validity is not challenged on the motion.<sup>5</sup> Six years

<sup>1</sup> *Smith v. Grigg, Ltd.* 41 R.P.C. 149; and see also the patent cases of *Jackson v. Needle*, 1 R.P.C. 174, and *Holophane, Ltd. v. O. Berend & Co., Ltd.*, 15 R.P.C. 18.

<sup>2</sup> *Margetson v. Wright*, 2 De G. & Sm. 420.

<sup>3</sup> *Whitelock v. Automatic Phonograph Company*, 25 R.P.C. 615. *Marshall and the Lace Web Spring Co., Ltd. v. Crown Bedding Co., Ltd.*, 46 R.P.C. 267.

<sup>4</sup> *Rothwell v. King*, 3 R.P.C. 379. *Renard v. Levinstein*, 10 L.T.N.S. 94.

<sup>5</sup> *Marshall and the Lace Web Spring Co., Ltd. v. Crown Bedding Co., Ltd.*, 46 R.P.C. 267.

has been held to be a substantial period.<sup>1</sup> But, if validity is challenged on the motion, it would appear that an interlocutory injunction will not be granted, no matter what the age of the patent, or the time for which it has remained undisputed.<sup>2</sup> There is, however, one case where an interim injunction will nearly always be granted.

If the design has been held valid in a court of law, there is a strong *prima facie* case for an interim injunction. Thus, in the case of *British Thomson-Houston Co., Ltd. v. B.T.T. Electric Lamp and Accessories Co.* (39 R.P.C. 167), where a patent had been held valid in the House of Lords, and a certificate of its validity granted, an interim injunction was obtained, even though the defendants had filed fresh evidence directed against its validity.

Where the Court will not grant an injunction it has generally ordered the defendant to keep an account.<sup>3</sup> Even if the plaintiff has made out a case for an injunction, the Court may order an account instead. It is a matter for the discretion of the judge as to which course he will take.<sup>4</sup> In *Bonella v. Espir* (43 R.P.C. 159), Russell, J., said (at page 161): "A plaintiff must first of all establish his case for an interlocutory injunction, and then it may be that, notwithstanding that, the Court will relieve the defendant from an injunction upon his undertaking to keep an account, if he is a person of such substance that the undertaking will give the relief which the plaintiff requires."

Account May  
be Ordered

<sup>1</sup> *Rothwell v. King* 3, R.P.C. 379. *Renard v. Levinstein* 10, L.T.N.S. 94.

<sup>2</sup> *Marshall and the Lace Web Spring Co., Ltd. v. Crown Bedding Co., Ltd.*, 46, R.P.C. 267.

<sup>3</sup> *Jackson v. Needle*, 1 R.P.C. 174. *Grafton v. Watson*, 51 L.T.N.S. 141. *Holophane v. Berend & Co., Ltd.*, 15 R.P.C. 18.

<sup>4</sup> *Grafton v. Watson*, 51 L.T.N.S. 141.

If the injunction is granted, or an undertaking in lieu of an injunction is given, the plaintiff is, according to settled practice, called upon to give a cross undertaking in damages to recoup the defendant for any loss sustained by the injunction or undertaking should the action subsequently fail.<sup>1</sup> If the plaintiff is the Crown, or any one suing on the Crown's behalf, such cross undertaking will not be required.<sup>2</sup>

**Balance of Convenience**

If there is any doubt as to whether an injunction should be granted, or whether the defendant should be ordered to keep an account, which of the two courses will be adopted will be decided by the balance of convenience.<sup>3</sup> In *Grafton v. Watson* (51 L.T.N.S. 141), where it was shown that the defendants had actually ordered their designer to copy the plaintiff's design, as nearly as possible without actually infringing, and there would have been inconvenience on both sides, an injunction was granted, Baggalay, L.J., saying (at page 143): "I think, therefore, if any inconvenience is to be sustained on one side or the other, the persons who are to bear the inconvenience, having regard to all the circumstances of the case, are the defendants who have brought it on themselves by endeavouring, as far as they safely can, to imitate the designs of the plaintiffs." And in *Knowles & Co. v. Bennett & Sons* (12 R.P.C. 137), Robinson, V.C., said (at page 148): "The only question that remains is this, whether or no the inconvenience, the injustice, would be so great if I am wrong in granting an injunction that I ought to pause before doing so. It seems to me that the parties are very evenly balanced in that respect." An injunction was granted.

<sup>1</sup> *Graham v. Campbell*, 7 Ch.D. 490.

<sup>2</sup> *Secretary of State for War v. Cope*, 36 R.P.C. 273.

<sup>3</sup> *Grafton v. Watson*, 51 L.T.N.S. 141.

**5. STATEMENT OF CLAIM.**

This should contain—

(1) The name of the registered proprietor.  
(2) A statement that at the date of its registration the design was a new or original design which had not been previously published in the United Kingdom. If a certificate of the validity of the design has been granted in former proceedings, this fact should be pleaded, as it entitles the plaintiff if he succeeds to solicitor and client costs.<sup>1</sup>

(3) An allegation that the defendant has infringed the design of the plaintiff by applying it without his consent for the purposes of sale, and, if the defendant is a vendor, an allegation that he has sold articles to which the design has been applied. Further, if the defendant is a manufacturer, there should be an allegation that he knew of the Act; or may have been doing constituted an infringement, but it was not in question.

(4) Particulars of infringement must be given, at least on a plea of invalidity, it is sufficient of a specific act of infringement, if the registration before the issue of the writ, which can be proved, must be pleaded.

In patent cases, these particulars are always contained in what are called particulars of breaches which are delivered with the statement of claim, but in the form of a separate pleading. Similarly, the defendant delivers with his defence particulars of objections, which particularize facts upon which the defendant will rely (such as instances of prior publication, prior user, etc.) to prove invalidity of the patent sued upon. In patent cases, the delivery of particulars of breaches and particulars of objections is compulsory. In design actions it is optional. If it is not done, then what would

<sup>1</sup> Sects. 35 and 61.

have been contained in the particulars of breaches is put into the statement of claim, and the same applies to defence and particulars of objections. Sometimes, the same thing is the subject of both a patent and a design, in which case the plaintiff may sue on both in the same action. In such a case, as he has to deliver particulars relating to the patent, he would also include in them particulars relating to the design.

## 6. DEFENCE.

A defendant to an action for infringement has the following available defences—

- (1) Non-infringement.
- (2) Invalidity of the design; either
  - (a) On the ground that it is not a design within the meaning of Sect. 93 of the Act; and/or
  - (b) On the ground that it was not new or original at the date of its registration.

If the defence is invalidity, it is usual for the defendant to move to rectify the register.

In *Smith v. Grigg, Ltd.* (41 C.E., having 9), the point was raised as to whether it is, in fact, permissible to plead invalidity of the design as a defence, without at the same time moving to rectify the register. It was submitted that the case of a registered design is different to that of a patent, as the effect of Sect. 53 and Sect. 60 of the Act is to give to the proprietor of a design an absolute statutory right, the effects of which cannot be avoided so long as the registration remains in force. In other words, until the registration has actually been set aside, the results of the statutory right must follow. Actually, the Court of Appeal were able to give judgment in the case upon another ground and contented themselves with merely expressing their doubt upon

the point.<sup>1</sup> Though it is very doubtful, it may well be that Sect. 53 does, in fact, give an absolute statutory right, and the safest course, if a defendant wishes to raise the defence of invalidity, is unquestionably for him to move to rectify the register.<sup>2</sup>

Other defences which a defendant may plead are—

- (3) That the plaintiff is not the registered proprietor.
- (4) That he applied the design with the consent of the registered proprietor.
- (5) If the defendant is a mere vendor that he did not know that what he was doing was an infringement of the design in question.
- (6) Non-marking of articles to which the design has been applied.

As stated above, particulars of invalidity may be included in the defence, or may be delivered separately in the form of particulars of objections. Particulars

It may become necessary to amend the particulars. For instance, the defendant may discover an anticipation of which he did not know at the date when he drew his original pleading. In patent cases the general rule of practice is that, if the defendant applies to amend his particulars before the trial, he is allowed to do so on the terms that the plaintiff is given six weeks from the date of the amendment in which to elect whether to discontinue or not. If he does elect to discontinue, he can then do so on the terms that

<sup>1</sup> See also *British Insulated and Helsby Cables, Ltd. v. London Electric Wire Co. and Smiths, Ltd.*, 30 R.P.C. 620, and *Rose v. Pickavant & Co., Ltd.*, 40 R.P.C. 320.

<sup>2</sup> Though in *Doble v. Spaendonck*, 27 R.P.C. 440, which was an action for infringement, the designs were held to be invalid for want of novelty, and the action consequently dismissed, although there was no cross motion to rectify. See also *Werner Motors, Ltd. v. Gamage, Ltd.*, 21 R.P.C. 621. In neither of these cases, however, did the defendants object to the course pursued.

the defendant will have to pay all the costs incurred subsequent to the date of the original particulars, the plaintiff paying those prior thereto. The same practice is applicable to design cases.<sup>1</sup> The form of the order is that in *Baird v. Moule's Patent Earth Closet Co.*, set out in *Edison Telephone Co. v. India Rubber Co.* (1881, 1 Ch.D. 137). But, although this practice is almost always followed, it need not necessarily be so, as the Court has an absolute discretion.<sup>2</sup>

If particulars are not sufficiently definite, further and better particulars may be asked for, and may at any time be ordered by the Court.<sup>3</sup>

## 7. INSPECTION.

Sect. 34 of the Act makes special provision for inspection in patent actions, but this section appears to have no application to designs. As a fact, the occasions on which inspection would be necessary or justified, in a design action could only be comparatively rare. Sometimes, however, it might be necessary, in which case it might be obtained under the Ordinary Rules of the Supreme Court, by Order 50, Rule 3. The Court can, on the application of any party to an action, grant leave for the inspection of anything which is the subject of the action, or as to which any question may arise in the action.

As to whether the inspection would be granted or not, and, if so, upon what terms, the cases dealing with patents are in point. Inspection is not a matter of right, but is a matter for the discretion of the Court.<sup>4</sup> Unless it is satisfied that the plaintiff cannot bring the

<sup>1</sup> *Morris Wilson & Co. v. Coventry Machinists Co.*, 8 R.P.C. 853.

<sup>2</sup> *Wooley v. Broad*, 9 R.P.C. 429. *Wilson and Wilson Bros. Bobbin Co., Ltd. v. Wilson & Co., Ltd.*, 16 R.P.C. 315.

<sup>3</sup> See O. 19 r, 7 R.S.C.

<sup>4</sup> *McDougall Bros. v. Partington*, 7 R.P.C. 351, 472.

action to trial without inspection, the Court will not generally grant it.<sup>1</sup>

The plaintiff should also be able to make out a *prima facie* case that there is infringement.<sup>2</sup> It is not enough for him merely to state that he suspects that the defendant is infringing. He must give reasons for his belief.<sup>3</sup> In patent cases, the defendant often objects to inspection on the ground that it may involve the disclosure of a trade secret, in which case, the Court may order inspection by experts sworn not to disclose them.<sup>4</sup> Such a state of affairs could hardly, however, arise in the case of a design, except, possibly, if the alleged offence of the defendant was "doing something to enable the design to be applied."

#### DISCOVERY.

Order 31 R.S.C. deals with the subject of discovery, whether of documents, or of facts by interrogatories.

Generally, discovery will not be allowed till the issues have been defined,<sup>5</sup> the ordinary rule being that no order is made for discovery till after delivery of defence.<sup>6</sup> This is, however, not an absolute rule, and there may be exceptional cases in which it would be allowed before defence.<sup>7</sup>

Nothing which is irrelevant to the question in issue will be allowed, even though it might be admissible on cross-examination. Discovery of matters such as the defendant's accounts, which are only material to the assessment of damages, is not permitted before trial.<sup>8</sup>

<sup>1</sup> *McDougall Bros. v. Partington*, 7 R.P.C. 351, 472.

<sup>2</sup> *Cheetham v. Oldham and Fogg*, 5 R.P.C. 617.

<sup>3</sup> *Germ Milling Co. v. Robinson*, 1 R.P.C. 217.

<sup>4</sup> *British Thomson-Houston Co. v. Duram, Ltd. (No. 2)*, 37 R.P.C. 121.

<sup>5</sup> *British Thomson-Houston Co., Ltd. v. Duram, Ltd.*, 31 R.P.C. 507.

<sup>6</sup> and <sup>7</sup> *Woolfe v. Automatic Picture Gallery, Ltd.*, 19 R.P.C. 161.

<sup>8</sup> *Fennessy v. Clark*, 37 Ch. D. 184.

Thus, if infringement has been admitted, the defendant should not be called upon before trial to give names of his customers.<sup>1</sup> And, even if it has not been admitted, he need only give the names of those which have reference to the specific act or acts of infringement complained of in the plaintiff's particulars. But he must give these.<sup>2</sup>

The party against whom discovery is asked may object to it on the ground that what he is asked to disclose will amount to disclosing the evidence upon which he will rely. In *Carnegie Steel Co. v. Bell Bros., Ltd.* (24 R.P.C. 82), Buckley, L.J., said (at page 92): "The affidavit that has been made, it is not contested, is an affidavit properly claiming privilege for these documents as documents supporting only the defendant's case, and not tending to prove or support the plaintiff's case. . . . Particulars of prior user must be given; evidence of prior user need not be given." A defendant, however, has been compelled to answer interrogatories as to the actual names of persons who made a prior user.<sup>3</sup>

#### Privilege

Privilege may also be claimed for communications between the party and his professional legal advisers, but there is no such privilege for communications between a person and his patent agent. If the same person holds both the position of solicitor and patent agent, only those communications are privileged which are made by him in his capacity of solicitor.<sup>4</sup> Another ground of privilege is that the discovery, if ordered, will tend to lay the party open to a penalty. Thus, when the proprietor of a design is suing for the penalty, interro-

<sup>1</sup> *Lister v. Norton, Bros. & Co., Ltd.* 2 R.P.C. 68.

<sup>2</sup> *Aktiengesellschaft für Autogene Aluminium Schweissung v. London Aluminium Co., Ltd.* 36 R.P.C. 199.

<sup>3</sup> *Crossley v. Tomey*, 2 Ch.D. 533.

<sup>4</sup> *Morley v. Victoria Rubber Co.*, 3 R.P.C. 351.

gatories tending to show that the defendant has made himself liable to that penalty will not be allowed.<sup>1</sup> The fact that the plaintiff has also claimed for damages will not avail to allow him to put such interrogatories, unless he elects to proceed for damages to the exclusion of the penalty.<sup>2</sup>

By Order 31, Rule 11, R.S.C., if any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a judge for an order requiring him to answer, or to answer further as the case may be. . . ." Where a defendant stated in answer to an interrogatory as to a prior user made by himself that it was to all intents and purposes similar to what was described in the plaintiff's specification, but he could not describe what the differences were without an "ocular demonstration," the answer was held sufficient.<sup>3</sup>

#### RELIEF.

The relief which the plaintiff may obtain if he succeeds in the action is dealt with in sect. 60 (2) of the Act, which is as follows—

If any person acts in contravention of this section, he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds, recoverable as a simple contract debt, or, if the proprietor elects to bring an action for the recovery of damages for such contravention and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly. Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed one hundred pounds.

The proprietor may thus recover either a penalty

<sup>1</sup> *Saunders v. Wiel*, 9 R.P.C. 459. *Titus Astle, Ltd. v. Mansfield, 22 R.P.C. 356.* <sup>2</sup> *Saunders v. Wiel*, 9 R.P.C. 459.

<sup>3</sup> *Crossley v. Tomey*, 2 Ch.D. 533.

or damages, whichever he has elected to proceed for. But he must make such election and cannot obtain both.

The section also gives him the right to an injunction, and, in addition, he may obtain delivery up of all infringing articles which are in the possession of the plaintiff.

### INJUNCTION.

The object of the injunction is to prevent the defendant, his servants or agents from infringing the registered design at any time in the future. Where infringement is proved there is a *prima facie* right to an injunction, as it is presumed from the fact of infringement that there is a likelihood of its recurrence,<sup>1</sup> so that in practically all cases where the plaintiff succeeds he will obtain an injunction. The fact that the defendant says that he will not do it again will not prevent an injunction being given against him.<sup>2</sup> In a few exceptional cases, however, if it can be definitely shown that there is no such likelihood of any recurrence, then an injunction may be refused.<sup>3</sup> Thus, in *Procter v. Bailey & Son* (6 R.P.C. 538), an injunction was refused, even though infringement was proved, as there the defendants had only used the infringing article on one occasion, five years previously to the action, and had ever since abandoned its use, as they found it did not work satisfactorily.

Even if there is no infringement the Court may grant an injunction if it is shown that the defendant had the intention of infringing<sup>4</sup> or had threatened to infringe.<sup>5</sup> In *The Shoe Machinery Co., Ltd. v. Cutlan* (12

<sup>1</sup> *Procter v. Bayley & Son*, 6 R.P.C. 538.

<sup>2</sup> *Losh v. Hague*, 1 W.P.C. 200.

<sup>3</sup> *Procter v. Bayley & Son*, 6 R.P.C. 538. "Ibid."

<sup>5</sup> *Cooper v. Whittingham*, 15 Ch.D. 501.

R.P.C. 342), Romer, J., said (at page 357): "Two kinds of action may be brought by a plaintiff patentee. The one is based on this, that the defendant has infringed before action brought, and in respect of this the plaintiff is entitled to claim damages, or an account and an injunction to prevent similar infringements in the future. The other action is based not on the fact that the defendant has infringed, but that he threatens and intends to infringe; and in this case the plaintiff may claim an injunction to restrain the threatened infringement. Of course, you may find both kinds of action combined in one. . . ."

The equitable right of an injunction will be granted, even though a penalty is attached to the illegal act.<sup>1</sup> So that if the proprietor of a registered design is proceeding for the penalty, this fact will not be any bar to his obtaining an injunction, though, as already stated, it is a bar to his obtaining damages.

#### THE PENALTY.

By sect. 60 (2) the proprietor of a registered design may claim from an infringer a penalty, which, however, must not exceed £50 for each offence, and must not exceed £100 in all in respect of any one design.

Thus, if two articles to which the design had been applied were made or sold by the defendant, the maximum penalty of £50 for each article could be given, making £100 in all. But if ten articles had been sold, £100 would still be all that could be recovered, which would be £10 per offence.

The remedy of the penalty may not be sufficient to compensate the proprietor of the design for the loss which he has suffered, and has, therefore, been largely

<sup>1</sup> *Cooper v. Whittingham*, 15 Ch.D. 501.

superseded by the alternative remedy of damages. Though both might originally have been claimed, the plaintiff would subsequently have to elect as to which he would proceed for.<sup>1</sup>

## DAMAGES.

Sect. 60 (2) provides that, as an alternative to the penalty, damages may be claimed. As to the method of assessing what the damages amount to, the same principles will naturally apply as in patent cases. The measure of damages is the loss which the proprietor of the design has suffered owing to the infringement, the question being how much profit would he himself have derived if he had sold the articles which the defendant sold, or obtained a royalty upon them.

The principle is to ascertain as far as possible how far the sale of the defendant's infringing articles has interfered with the sale of the plaintiff's goods,<sup>2</sup> and to compensate him for the loss of any orders which the defendant obtained which would otherwise have gone to him. But it does not always necessarily follow that the plaintiff would have sold a quantity of articles equal to that sold by the defendant.

The following facts may also be taken into account in estimating the damages.

(1) That by reason of the defendant's competition, the plaintiffs were forced to reduce their price.<sup>3</sup>

(2) The fact that the plaintiffs' establishment charges would not have had to be increased to make the extra

<sup>1</sup> *Saunders v. Wiel*, 9 R.P.C. 459.

<sup>2</sup> *United Horse Shoe and Nail Co., Ltd. v. Stewart & Co.*, 5 R.P.C. 260. *Pneumatic Tyre Co., Ltd. v. Puncture Proof Pneumatic Tyre Co., Ltd.*, 16 R.P.C. 209.

<sup>3</sup> *Leeds Forge Co., Ltd. v. Deighton's Patent Flue Co., Ltd.*, 25 R.P.C. 209. *Meters, Ltd. v. Metropolitan Gas Meters, Ltd.*, 28 R.P.C. 157, at p. 164.

articles, and, therefore, their profit would have been larger.<sup>1</sup>

(3) That the infringing articles were put forward in such circumstances as to effect the plaintiff's business.<sup>2</sup>

If the proprietor has granted a licence or licences this gives a far simpler way of estimating the damages than where they have to be computed solely on the amount of loss which he has entailed through his sales being reduced in quantity or price. If a licence has been granted the damages can fairly be said to be the sum which the defendant would have had to pay the plaintiff in royalties on all the infringing articles if he had taken a licence. And, even if there is no licence in actual fact, seeing how much simpler this computation is, the damages can, and have in more than one case, been calculated by the Court estimating what would be a reasonable royalty and working out the amount of the damages on that basis.<sup>3</sup>

In *Poulton v. Adjustable Cover and Boiler Block Co.* (25 R.P.C. 529, 661), a patent was declared valid and infringed, and an inquiry as to damages ordered. Subsequent to this order, but before the inquiry was finished, the defendant discovered fresh evidence which enabled him to revoke the patent.

It was held that in spite of this, the damages found due on the inquiry must be paid, as the action having once been fought, the subject of the action was *res judicata* as between the parties and created a perfect estoppel.

<sup>1</sup> *Leeds Forge Co., Ltd. v. Deighton's Patent Flue Co., Ltd.*, 25 R.P.C. 209.

<sup>2</sup> *Pneumatic Tyre Co., Ltd. v. The Puncture Proof Pneumatic Tyre Co., Ltd.*, 16 R.P.C. 209.

<sup>3</sup> *Meters, Ltd. v. Metropolitan Gas Meters, Ltd.*, 28 R.P.C. 157, at p. 164. *Watson Laidlaw & Co., Ltd. v. Pott Cassels and Williamson*, 31 R.P.C. 104, at p. 120.

## DELIVERY UP.

The Act itself makes no provision for delivery up, but from quite early times it has been the practice for the Court to order the delivery up or destruction of all infringing articles in the possession of the defendant. Thus, in 1848, in *Macrea v. Holdsworth* (2 de G. & S. 496), delivery up was awarded by the Vice Chancellor, and nowadays an order for delivery up or destruction upon oath will almost invariably be obtainable by a successful plaintiff.<sup>1</sup> But delivery up will only be awarded as against the defendants themselves. In *Knowles & Co., Ltd. v. John Bennett & Sons* (12 R.P.C. 137), where the infringing goods were in the hand of shipowners, Robinson, V.C., said (at page 148): "I can order the defendants to deliver the goods to the plaintiffs, but I cannot make anyone else deliver them. The shipowners might be added as defendants, so as to restrain them from parting with the goods except to the plaintiffs."

## COSTS.

Formerly, costs followed the event, and the Court had no discretion to order otherwise, except where the successful party had been guilty of some misconduct. Now, however, by Order 65, Rule 1, R.S.C., the Court has an absolute discretion in the matter, except where the case is tried with a jury. But the practice is still the same, namely, that the successful party to an action is usually awarded the costs of the action unless he

<sup>1</sup> See *Gordon and Munro v. Patrick and Hill*, 12 R.P.C. 22. *Ingram and Kemp, Ltd. v. Edwards Bros.*, 21 R.P.C. 463. *Gunston v. Winox, Ltd.*, 38 R.P.C. 40. *Cartwright v. Coventry Radiator Co.*, 42 R.P.C. 351. *Wallpaper Manufacturers, Ltd. v. Derby Paper Staining Co.*, 42 R.P.C. 449. *Dunlop Rubber Co. v. Booth & Co., Ltd.*, 43 R.P.C. 139.

has done something to deprive him of them. If, however, there has been some misconduct on the part of the successful party, he may be deprived of his costs, or a part of them. Thus, in *Sherwood and Cotton v. Decorative Art Tile Co.* (4 R.P.C. 207), although the plaintiff was successful, the defendant only had to pay two-thirds of the plaintiff's costs because the plaintiff had called a great number of unnecessary witnesses. In *Gunston v. Winox, Ltd.* (38 R.P.C. 40), the design was held to be invalid owing to publication, but owing to the defendants' conduct, they were made to pay the costs of the action, with the exception of the costs of the issue of publication.

In patent actions, where there are distinct issues to be tried, as there usually are, namely : (1) The validity of the patent (if it has been attacked), and (2) the question of infringement, if the defendant succeeds on one issue, but loses on the other, the costs of the action may be divided, the successful party on each issue getting the costs on that issue. Thus, where the plaintiff fails to prove infringement, and the defendant has made it a part of his case to attack the validity of the patent, but fails to overthrow it, though the defendant has won, and will get the general costs of the action, he will generally have to pay those costs which are directly attributable to the trying of the question of validity.<sup>1</sup> Similarly, if he proves invalidity, but has raised any unsuccessful issue on infringement, though he will get the general costs of the action, he may have to pay the costs of the issue of infringement.<sup>2</sup> The same course has sometimes been adopted in design

<sup>1</sup> See *Marconi's Wireless Telegraph Co., Ltd. v. Mullard Radio Valve Co., Ltd.*, 40 R.P.C. 1, where all the cases were reviewed.

<sup>2</sup> See *Badische Anilin and Soda Fabrik v. Levinstein*, 2 R.P.C. 73.

cases.<sup>1</sup> Nowadays, there appears also to be a growing practice in patent cases for the trial judge to divide the costs on a fractional basis.<sup>2</sup>

By Sect. 35 of the Act. In an action for infringement of a patent, the Court may certify that the validity of any claim in the specification of the patent came in question; and, if the Court so certifies, then in any subsequent action for infringement of such claim, the plaintiff in that action on obtaining a final order or judgment in his favour shall, unless the Court trying the action otherwise directs, have his full costs, charges and expenses as between solicitor and client so far as that claim is concerned.

By Sect. 61, Sect. 35 is applicable to designs, so that if the validity of the design has already been established in a former action, and a certificate of its validity granted by the Court, the plaintiff will, if he wins, unless the Court otherwise directs, be entitled to solicitor and client costs. If, however, in the former action, though a certificate of validity was granted, the question of validity was never really gone into, solicitor and client costs may be refused.<sup>3</sup> Similarly, if in the action in question validity is not an issue, they may be refused,<sup>4</sup> the idea of the certificate of validity being to prevent the validity of the patent or design being challenged over and over again.

Costs on the higher scale are practically never

<sup>1</sup> See *Birkin & Co. v. Pratt, Hurst & Co., Ltd.*, 12 R.P.C. 371, and *Blank v. Footman Pretty & Co.*, 5 R.P.C. 653, where, though the design was held invalid, the plaintiff was given the costs of the issue of "marking." In *Jackson v. Testar*, 36 R.P.C. 289, where the design was held valid but not infringed, no order was made as to costs.

<sup>2</sup> *Lektophone Corporation v. S. G. Brown, Ltd.*, 46 R.P.C. 203. *Lister, Bros. v. Thorp Medley & Co.*, 47 R.P.C. 99.

<sup>3</sup> *British Thomson-Houston Company, Ltd. v. Corona Lamp Works, Ltd.*, 39 R.P.C. 49 at p. 93.

<sup>4</sup> *Saccharin Corporation, Ltd. v. Dawson*, 17 R.P.C. 169.

granted. In *Grafton v. Watson*, Lindley, L.J., said: " You must show special reasons for having costs on the higher scale. They are only granted on special grounds arising out of the nature and importance, or the difficulty or urgency of the case.<sup>1</sup> Even patent actions, where questions of great difficulty often arise, they have only on very rare occasions been given,<sup>2</sup> and there is no design action, certainly within recent times, in which they have been given.

Costs of an interlocutory motion are usually costs in the cause, unless the motion is agreed to be treated as trial of the action. But it is entirely within the discretion of the judge, and in cases where it has appeared upon the motion that one side is very definitely in the right, costs of the motion may be awarded to the successful party.<sup>3</sup>

It has been held that in an action to restrain infringement of a design, on a motion for judgment the plaintiffs were entitled to the costs of the motion, and not merely to such costs as would have been incurred had the application been made by summons in chambers<sup>4</sup> for in the case of patents, designs and trade marks it is desirable that some publicity should be given to the order.<sup>5</sup>

<sup>1</sup> See Order 65, r. 9, R.S.C.

<sup>2</sup> See *Dunlop Pneumatic Tyre Company, Ltd. and Others v. Wapshare Tube Company, Ltd.*, 17 R.P.C. 433.

<sup>3</sup> *Walker & Co. v. A. G. Scott & Co., Ltd.*, 9 R.P.C. 482.

<sup>4</sup> *Smith & Jones, Ltd. v. Service Reeve & Co.*, 31 R.P.C. 317.

<sup>5</sup> *Smith & Jones, Ltd. v. Harrow, Bunn and Butler*, 31 R.P.C. 322

## CHAPTER VIII

### MARKING

Articles  
Must be  
Marked

By Sect. 54 (1) (b) of the Act, before delivery on sale of any articles to which a registered design has been applied, the proprietor shall cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design, unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

Sect. 54 (2) lays down that the Board of Trade may, if it thinks fit, at the request of any trade or industry dispense with or modify, as regards any class or description of articles, any of the requirements of this section as to marking. And, in fact, by rule 63 of the Designs Rules, it is laid down that before delivery on sale every article shall be marked with the word Registered or the abbreviation Regd. or Rd., and with the number appearing on the Certificate of Registration, but the number may be omitted from articles in Classes 9, 13, 14, and 15, and marking may be dispensed with altogether as regards printed cotton piece goods except handkerchiefs.

Exceptions

Except in these cases, however, every article to which a registered design is applied must before "delivery on sale" be marked in the prescribed manner,

and if the proprietor has failed to have articles so marked, he will be debarred from recovering any penalty or damages in any subsequent action for infringement which he may bring. Non-marking before delivery on sale is thus a good defence to an action for infringement so far as a penalty or damages are concerned.

There is "delivery on sale" of articles to which the design is applied where there is a trade between two persons, and one sells and delivers such articles to another who buys and receives them.

Meaning of  
Delivery on  
Sale

In *Wooley v. Broad* (9 R.P.C. 429), lace in the brown or unfinished state had been made by the proprietor without being marked and delivered to another firm of the same name to be finished by them. The finishing firm paid for the brown lace, and they, the finishing firm, were to put the mark on after finishing the lace. It was held that there had been a "delivery on sale," and that as there had been no marking prior to it, the plaintiff was debarred from succeeding against an infringer. Lord Coleridge, L.C.J., after intimating that if the finishing firm after finishing the lace had returned it to the manufacturing firm, his decision would have been otherwise, as in that case the one firm would merely have been acting as the servant of the other, said (at page 434): ". . . When between the manufacturer of the brown lace, and the finisher of that brown lace into white lace there is a trade, and the manufacturer sells and the finisher buys and pays for that article, I cannot doubt that it is an article, delivered to the finisher on sale."

"I do not know how to describe a sale in any other way, and I put to the three witnesses one after the other in different words: 'Is this a contract of bargain

## COPYRIGHT IN INDUSTRIAL DESIGNS

and sale,' and they said: 'Certainly.' The lace becomes the finisher's as soon as he had got it and paid for it."

"All Proper Steps"

If, however, the proprietor can show that he "took all proper steps" to ensure that the articles were marked, and it was not his fault that they were not marked, then he will not be debarred from his remedy, owing to their not being marked. In *Wittman v. Oppenheim* (54 L.J., Ch. 56), the plaintiffs had furnished their foreign manufacturers with a dye with which to stamp articles to which the design had been applied. By mistake, the manufacturers stamped some articles with another rather similar dye which actually belonged to an older design which had expired. It was held that the proprietors had taken "all proper steps" to ensure the marking.

In *re Rollason's Design* (15 R.P.C. 441), a large number of articles had been marked with the number 252,908, instead of with the number 232,908. The proprietor had given proper instructions and the correct number to a competent manufacturer, but, owing to the mistake of a workman a five was put into one of the dies instead of a three, and no one had noticed it. It was held that the proprietor had taken "all proper steps" within the meaning of sect. 54. Lord Herschell said (at page 447): "My lords, the section, by its concluding words leaves an opening to prevent the operation of the section in full stringency, because it provides that the copyright shall not cease if all proper steps have been taken by the proprietor to ensure the marking of the article. In interpreting these concluding words, I think it is necessary to bear in mind the object of the section, and to take into account, too, what the nature of the omission was. The object of the section as stated in plain terms is "to denote

that the design is registered"—that is to say, to give warning to the public that they are not entitled to copy it by reason of registration. Of course, if there is nothing to give that warning to the public, the proprietor would have to make out a very strong case to excuse himself under the concluding words of the section, because he has failed to do that which was essential to the very purpose of the provision contained in the section, namely, to denote to the public that the design was a registered one. Even in that case, he might escape the loss of his design by making out a case which would show that it was not due to any fault of his; but it seems to me that the case to be made out would then need to be much stronger than if there were merely some error in complying with the exact requirements of the section, as to the figures or words to be put upon the articles, if there be such compliance as plainly to indicate and denote that the design is a registered one. That is the class of case with which we are dealing here.

The public would be equally warned of the registration of the design, whether out of these six figures one was a three or a five."

Mere general instructions, however, to servants to see that no articles go out unmarked are not sufficient.<sup>1</sup> Though the master is not responsible for the carelessness of his servants, if he does not prescribe any particular method of checking whether the articles are marked or not, and does not see to it that his instructions are properly carried out, he cannot be held to have taken "all proper steps."<sup>2</sup>

Sale abroad of articles which have not been marked

<sup>1</sup> *Johnson v. Bailey*, 11 R.P.C. 21. And see *Wedekind v. General Electric Co., Ltd.*, 14 R.P.C. 190.

<sup>2</sup> *Ibid.*

constitutes a violation of the section just as much as a sale in England,<sup>1</sup> no matter by whom they were made, whether an Englishman or a foreigner.<sup>2</sup> The issue of small pieces of a material as patterns is a violation, just as much as the sale of the material in bulk, if those patterns are not properly marked.<sup>3</sup>

Goods which are made in the piece, but are subsequently divided up into separate bits, each bit forming an article, must each one be marked.<sup>4</sup>

The fact that an article is in two parts does not make it necessary to mark both parts, if one would not be a complete article without the other.<sup>5</sup>

But, if only part of an article is the subject of a design, the mark must be put upon that part, and if it is not put upon that part, the section will not have been complied with.<sup>6</sup> Thus, in *Lea and Perrins v. Price & Son* (22 R.P.C. 122), the design was for a lamp head, i.e., a top part which was to be attached to a lamp. The plaintiffs had attached a ring with the registration number upon it, not to the lamp head, but to a metal ring at the bottom of the lamp itself. It was held that the articles were insufficiently marked. Channel, J., said (at page 126): "It seems to me that the marking of the ring might very possibly do, and would do, I suppose, where the design was claimed for the whole article or where the design was claimed for the pattern of the ring, but when you are claiming only for the pattern of the head, which is a different

<sup>1</sup> *Savazin v. Hamell*, 7 L.T.N.S. 660.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Heywood v. Potter*, 22 L.J.Q.B. 133.

<sup>4</sup> *Hothersall v. Moore*, 9 R.P.C. 27. Where strips of cloth were cut up into dusters.

<sup>5</sup> *Ingram and Kemp, Ltd. v. Edwards Bros.*, 21 R.P.C. 463. *Fielding v. Hawley*, 48 L.T.N.S. 639.

<sup>6</sup> *In re Morton's Design*, 17 R.P.C. 117. *Lea and Perrins v. Price & Son*, 22 R.P.C. 122.

part, nobody would understand by your putting the mark on the ring that you intended to claim the registration of the design of the head. He might think that you were claiming for the registered design for the ring, or he might think, and I think very likely would think, that you were claiming the registered design for the whole lamp, but he would not think that you were claiming a registered design for the top."

## OFFENCES.

It is an offence for any one to sell an article and to represent it falsely as being registered, and any one doing so will be liable to conviction under the Summary Jurisdiction Acts to a fine not exceeding £5.<sup>1</sup> To sell an article with the word registered on it, or any other word implying that the design applied to the article is registered will amount to a representation that it is registered.<sup>2</sup> Any one putting the word registered, or any other words implying that there is a subsisting registration, upon any article after the registration has, in fact, expired will also be liable.<sup>3</sup>

<sup>1</sup> Sect. 89 (2).   <sup>2</sup> Sect. 89 (3).   <sup>3</sup> Sect. 89 (4).

as he had failed to discharge that onus the motion must fail.

In *re The Pneumatic Tyre Company's Registered Design* (11 R.P.C. 636), where the Comptroller had refused to enter a change of name of the proprietor, application was made to the Court to compel him to do so.

#### Cases Where the Design is Alleged to be Invalid.

It is manifestly impossible for the Comptroller when registering a design to know of every possible prior publication which may anticipate the design. Many designs thus get upon the register which are really invalid. It is, therefore, open to any person who is aggrieved by what he believes to be an invalid entry remaining on the register to move to have it expunged, and the Court on hearing the application will decide whether the design is, in fact, invalid or not. The questions as to novelty, originality, and publication, which have to be considered, are exactly the same as in applications for registration and actions for infringement, and need not, therefore, be gone into again here. Anyone will be aggrieved who makes articles of the type to which the registration applies, and who, by reason of the presence of the registration, is debarred from making them according to the design in question.

It would appear that not only is it possible to move to rectify the register on the ground that the design is not novel, but that it is also open to attack the registration on the ground that the design is not proper subject matter for a design within the meaning of Sect. 93 of the Act.<sup>1</sup>

By Sect. 72 (3), the prescribed notice of any

<sup>1</sup> For questions arising under this head see Chapter II.

application under this section shall be given to the Comptroller, who shall have the right to appear and be heard thereon, and shall appear if so directed by the Court.

Rule 86 of the Designs Rules is to the effect that four clear days' notice of every such application must be given to the Comptroller.

Where an order of the Court rectifying the register is made, notice of the rectification must be served upon the Comptroller.<sup>1</sup> An office copy of the order must be sent to the Comptroller by the person in whose favour the order is made, together with Form Designs No. 28 if required.<sup>2</sup>

#### 4. CANCELLATION OF DESIGNS UNDER SECTION 58.

The Sect. provides that—

(1) At any time after the registration of a design, any person interested may apply to the Comptroller for the cancellation of the registration of the design, on either of the following grounds—

The first ground is :

(a) That the design has been published in the United Kingdom prior to the date of registration.

This provision was introduced for the first time by the Act of 1919. Previously, it was not possible for anyone to apply for a design to be removed from the register upon such a ground, except by a motion for rectification in the High Court. Although an application by motion for rectification is still open to anyone who wishes to proceed in that way, where the design has been published in the United Kingdom prior to the date of registration, it is now also open to any one interested to avail himself of the section under consideration, and apply directly to the Comptroller for

<sup>1</sup> Sect. 72 (4).

<sup>2</sup> Rule 87.

its cancellation. Such procedure would, of course, be far cheaper than a motion in the High Court.

It is, of course, not possible to proceed under this section for cancellation of a registration on the ground that it is not a design within the meaning of Sect. 93 of the Act.

As to what distinction, if any, is meant to be drawn between a person "interested" under this section, and a person "aggrieved" under Sect. 72, it is difficult to say; presumably, their meanings are similar.<sup>1</sup>

The second ground upon which cancellation may be sought under this section is—

(b) That the design is applied by manufacture to any article in a foreign country, and is not so applied by manufacture in the United Kingdom to such an extent as is reasonable in the circumstances of the case.

This ground, though couched in different terms, was present in the earlier Act. It is very similar to Sect. 27 of the Act, which deals with the abuse of monopoly rights in a patent. The object of the subsection may thus be said to be to make proprietors of designs use them to encourage the establishment of new industries in this country, and to prevent their use in such a way as to actually hinder manufacture. If the applicant for cancellation can show, firstly, that there has been a considerable manufacture of articles according to the design abroad, and, secondly, that there has been practically no such manufacture here, the design will be cancelled. There is, however, a proviso to the subsection which is as follows—

Provided that, if the application be on the last-mentioned ground, and the Comptroller is satisfied that the time which

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<sup>1</sup> In re Hogge's Registered Design, 45 R.P.C. 67, it was held that the fact that the person applying for cancellation is an infringer is no objection to his application. Obviously, this fact makes him a person interested.

has elapsed from the date of registration has been insufficient for such application by manufacture in the United Kingdom, the Comptroller may adjourn the application for such time as he may deem sufficient for that purpose, and in lieu of cancellation, the Comptroller may order the grant of a compulsory licence on such terms as he may consider just.

Thus, a reasonable time must be allowed to the proprietor for the manufacture to get started, and if there has not been sufficient time the application may be adjourned. What is a sufficient time must depend upon the circumstances of the particular case in question.

The nature of the design, and whether it is necessary to set up complicated machinery in order to apply the design to articles by manufacture should be considered.<sup>1</sup>

In *re Timmlers' Designs* (31 R.P.C. 59), the Comptroller-General said (at page 61): "In my opinion, I think it must be assumed that the proprietor of a design has a reasonable time for making his preparations, and for commencing the manufacture of the article which embodies the design. What the extent of this time would be must depend upon the circumstances of each case and the particular design in question. There are some designs which are of a peculiarly ephemeral nature, such as for Christmas cards, or for a fashion for a special season. As regards these, it may be reasonable to suggest that the proprietor should, before registration, have taken steps to carry out his obligations under the Act, as, otherwise, the two or three months, during which the design is operative, would have passed before any manufacture would be necessary in this country. As regards other designs, however, I think a more extended period may be considered reasonable under the Section."<sup>2</sup>

<sup>1</sup> *In re Timmler's Designs*, 31 R.P.C. 59.

<sup>2</sup> See also *in re Hogge's Registered Design*, 45 R.P.C. 67.

Where the manufacture in this country was shown not to be adequate at the present time, but arrangements had been made which, when completed, would be likely to render the manufacture adequate, the Comptroller gave six months grace to the proprietor, and made an order for the cancellation of the design at the end of six months, unless in the meantime it was shown that the manufacture was adequate.<sup>1</sup>

An appeal lies from any order of the Comptroller made under this section to the Court,<sup>2</sup> and the Comptroller may also at any time refer the matter to the Court if he so desires.<sup>3</sup>

<sup>1</sup> *In re Timmeler's Designs*, 31 R.P.C. 59.

<sup>2</sup> Sect. 58 (2).

<sup>3</sup> Sect. 58 (2).

## CHAPTER X

### ACTION FOR THREATS

IT sometimes happens that the owner of a patent or registered design writes threatening letters to someone who is making articles which he thinks are an infringement of his patent or design, or to the customers of such a person, stating that he will sue them for infringement of his rights, if they do not desist from using the article or articles in question. There is, of course, nothing wrong in such a proceeding if (1) the patent or design in question is valid, and (2) the person threatened is really infringing. Unfortunately, however, this is by no means always the case, and it often happens that the owner of a design, which clearly does not cover the articles complained of, may by means of such groundless threats intimidate the customers of a perfectly honest and guiltless manufacturer, who will be sadly prejudiced by the refusal to buy, and consequent falling off, of his customers.

Nature of threats

At one time in such a case, where a patentee or owner of a registered design was guilty of issuing such groundless threats of legal proceedings, the person injured or prejudiced thereby could not successfully bring an action to prevent the issuing of such statements, though they were untrue, unless he could show that they were made *mala fide*.<sup>1</sup> He only had the common law remedy at his disposal. To meet such a case, the Patents and Designs Act of 1883, however, laid down that any one who had been aggrieved by the issue of such groundless threats might institute

Common law remedy

<sup>1</sup> *Halsey v. Brotherhood*, 19 Ch.D. 386.

proceedings to restrain their continuance. The section, which has been to a certain extent amended, is now Sect. 36, and is as follows—

**Statutory  
remedy**

Where any person claiming to have an interest in a patent, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not, in fact, an infringement of the patent.

Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.

By Sect. 61 of the Act, the provisions of Sect. 36 apply in exactly the same manner to registered designs.

**Form of  
Threat**

The section gives the right to sue a person who threatens "by circulars, advertisements, or otherwise." The words "or otherwise" have been construed broadly and are not confined to such things as circulars or advertisements *ejusdem generis*.<sup>1</sup> Thus, oral threats are within the section.<sup>2</sup> The threat must be a threat of legal proceedings or liability.<sup>3</sup> In *Kurtz v. Spence* (5 R.P.C. 161), the threat was to this effect: "We are the owners of a patent for the manufacture of alum and other salts of alumina, which is dated the 11th August, 1882; your working is an infringement of it, which we cannot allow." It was held that this constituted a threat of legal proceedings, Kekewich, J., saying (at page 172): "There is only one way in which a patentee cannot allow another man to manufacture, and that is by taking proceedings to obtain an injunction."

<sup>1</sup> *Skinner & Co. v. Perry*, 10 R.P.C. 1.

<sup>2</sup> *Ellis & Sons v. Pogson*, 40 R.P.C. 62, 179. *Luna Advertising Co., Ltd. v. Burnham & Co.*, 45 R.P.C. 258.

<sup>3</sup> *Luna Advertising Co., Ltd. v. Burnham & Co.*, 45 R.P.C. 258.

The threat must be in respect of a particular patent, and directed against a definite person or persons.<sup>1</sup> A mere general warning to infringers not to infringe, and to warn the public that the monopoly is one which the owner intends to enforce is not a threat within the meaning of the section.<sup>2</sup> In *Johnson v. Edge* (9 R.P.C. 142), Lindley, L.J., said (at page 148): "I cannot suppose that the section prevents a patentee from saying that which the patent itself implies—that anyone infringing must expect legal proceedings to be taken against him. I do not think it can mean that. That is merely saying what everybody knows already. That is not a threat against anybody in particular." And Kay, L.J., said (at page 149): "I think that all Lord Justice Bowen intended in his judgment in *Challender v. Royle* was merely this, that if a man stated, 'I have got a patent, and I mean to protect that patent by enforcing all my legal rights under it,' a general warning of that kind, not pointed against any particular person, which would not be by the public understood to apply to any particular person, might not be within this 32nd section at all; I do not think his language was meant to go farther than that."

Mere genera  
warning not  
a threat

Threat must  
be against  
someone in  
particular

In *Johnson v. Edge*, the threat complained of was as follows: "Notice to grocers and others. Information of extensive violation of Mr. William Edge's patent rights has been received. All parties are warned not to infringe these rights." It was held that this was a threat of legal proceedings within the meaning of the section, and was not a mere general warning, Lindley, L.J., said (at page 148): "Now this is addressed to the trade; what would they understand by it? . . .

<sup>1</sup> *Johnson v. Edge*, 9 R.P.C. 142. *Boneham and Hart v. Hirst Bros. & Co., Ltd.*, 34 R.P.C. 209.

<sup>2</sup> *Challender v. Royle*, 4 R.P.C. 363. *Johnson v. Edge*, 9 R.P.C. 142.

If they had turned their attention to it after Mr. Johnson had sent out these things, they would say: 'Oh, that is addressed to Harrison and Johnson—we know those two; they are making more or less things like Mr. Edge; it must be those things.' It must be, therefore, an intimation—it would be construed to be an intimation by Mr. Edge—that he considered these things an infringement of his patent."

Though  
specific  
person need  
not be  
named

Thus, the threat need not actually name any particular person. It will be sufficient if it is implied from the wording that a specific person or persons are referred to. In *Boneham and Hart v. Hirst Bros. & Co., Ltd.* (34 R.P.C. 209), the threat complained of was an advertisement to the effect that a certain registered design for a guard for the face of a wrist watch had "evoked some rubbishy imitations," and that legal proceedings would be taken against any infringer. It was held that there was a threat within the meaning of the section, for the warning was clearly directed against *somebody*, for it was not merely a warning against infringement in the future, but included a definite statement that some persons had already infringed. Where threats were made by a person who had applied for a patent, which had not, however, been sealed at the date of the threats, it was held that no action would lie under the section, as the section presupposed the existence of a patent.<sup>1</sup>

In *Challender v. Royle* (4 R.P.C. 363) Bowen, L.J., intimated that in his opinion a threat must be not merely a warning about something which is going to be done in the future, a warning as to a proposed manufacture, but a threat with reference to an actual act done. In *Kurtz v. Spence* (3 R.P.C. 161), Kekewich, J.,

<sup>1</sup> *Ellis & Sons v. Pogson*, 40 R.P.C. 62, 179.

interpreted what had been said by Lord Justice Bowen in the following way. He said (at page 171): "I understand the Lord Justice to mean that when a threat is given, there must be something then in respect of which the threatened party could claim a right of action, which must not be wholly with reference to something future or contingent—something proposed to be done. . . . I think he must have meant that there must be something actually existing—something done before the threat will be justifiable—but within the meaning of the Act he cannot have intended to exclude threats with reference to future manufacture."

The above would seem to be a correct interpretation of what was said. It is a threat to say: "Do not infringe in the future or I shall sue you," *provided* there has been a similar infringement before, *or* provided even that some other act, not itself an act of infringement, but which might reasonably be supposed to indicate that an infringement was likely or contemplated in the future has taken place. In other words, all that is necessary to show is that it refers to a definite ascertainable act of a particular person. Such a view is borne out by the judgments of Lindley, L.J., and Kay, L.J., in *Johnson v. Edge* (9 R.P.C. 142). In that case, Kay, L.J., said (at page 149): "I can easily conceive one case of future infringement which would come entirely within the mischief which this section was intended to provide against. For instance, take this case: Suppose a man issued a circular saying: 'I have a patent for such and such an article, I understand that Messrs. A. & Co. have recently erected a large manufactory for the purpose of manufacturing articles, which, when made, will be an infringement of my patent.'" Can it be said that a case like that would not

come within the mischief intended to be provided against by this section."

It has been held that the fact that the threats complained of were contained in a letter marked "without prejudice" will not prevent them from being actionable threats within the meaning of the section.<sup>1</sup>

Burden of proof

It will be readily understood, of course, that in order to succeed in an action to restrain threats, the plaintiff must satisfy the Court that the article complained of is in fact, not an infringement of the patent or registered design in question. *Prima facie*, the burden of proving this will be upon the plaintiff.<sup>2</sup> Prior to 1919 the words of the section were ". . . if the alleged infringement to which the threats related was not, in fact, an infringement of any legal rights of the person making such threats." Now, however, the words "of any legal rights," etc., have been replaced by the words "of the patent." Before this change it was held that the question of whether the patent was valid was material and might be considered, as, if it was invalid, there would not be any legal right to be infringed.<sup>3</sup> Now, however, under the changed wording, it is open to doubt whether the validity of the patent may be considered or not. On the grounds of common sense, however, it is submitted that it should, for as regards the position of the person threatened, it is just as trying to be threatened on an invalid registration as it is to be threatened when there is no infringement.

As to who may bring an action for threats, any person aggrieved may do so; thus any one who was making the article which was said to be an infringement could sue.<sup>4</sup>

<sup>1</sup> *Kurtz v. Spence*, 5 R.P.C. 161, at p. 173.

<sup>2</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 371.

<sup>3</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 371 and p. 376.

<sup>4</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 371.

## THE PROVISO.

There is a proviso to the section which is as follows—

Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.

The threats action is only meant to lie where the threats are groundless, and the section, therefore, provides that if the defendant shows by bringing an action for infringement that he is ready to put the matter to the test, then his threats will not be actionable. The action for infringement which is brought must, however, be a bona fide action.<sup>1</sup> It must be an action honestly brought to test either the validity of the patent, or the fact of infringement, whichever may be in question.<sup>2</sup> It is not necessary that the action should be brought against the person to whom the threats were offered,<sup>3</sup> but if it is against someone else, it must be brought bona fide, and must not be a merely collusive action.<sup>4</sup> If it is suggested that the action is collusive, the onus is on the plaintiff in the threats action to show it to be so.<sup>5</sup> Of course, where the action is against someone other than the person threatened, it will only suffice to bring the action if the articles manufactured or sold by that person are precisely the same as the articles sold or made by the person threatened.<sup>6</sup> If they are not the same, the proviso to the section will not be fulfilled. In *Day v. Foster* (7 R.P.C. 54), it was held that an action for infringement and royalties by

Action must  
be bona fide

And not  
collusive

<sup>1</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 375.

<sup>2</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 373.

<sup>3</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 373. *Colley v. Hart*, 7 R.P.C. 101, at p. 112.

<sup>4</sup> *Colley v. Hart*, 7 R.P.C. 101, at p. 112.

<sup>5</sup> *Colley v. Hart*, 7 R.P.C. 101, at p. 112.

<sup>6</sup> *Combined Weighing and Advertising Machine Co. v. Automatic Weighing Machine Co.*, 6 R.P.C. 502.

the patentee against his licensee was within the proviso, although the validity of the patent could not, of course, be called in question in such a case.

The proviso requires that the action for infringement should be both commenced and prosecuted with due diligence. Due diligence must be from after the time when the threat was made.<sup>1</sup> It is impossible to fix any precise time within which an action must be commenced. It must depend upon the circumstances of the particular case.<sup>2</sup> In *Challender v. Royle* (4 R.P.C. 363), just after the action for threats had been commenced, though before he had notice of it, the defendant in the threats action started an action against a third party. The threats were made in March, the action against the third party was started in May. It was held that the action had been commenced with due diligence.

The action for infringement must also be prosecuted with due diligence.<sup>3</sup> As to what amounts to prosecuting an action with due diligence, it has been held that it is not essential for the action to be prosecuted down to judgment, that it is not necessary for it to be prosecuted to a successful result, and that an action may have been commenced and prosecuted with due diligence within the meaning of the proviso, even though judgment be given against the plaintiff. In *Craig v. Dowding* (25 R.P.C. 259), the patentee, five days after the issue of the writ in the threats action, commenced an action for infringement. Statement of claim defence and particulars of objections were delivered. On receipt of the defence and particulars of objections, he discontinued the action apparently on the advice of

<sup>1</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 376.

<sup>2</sup> *Colley v. Hart*, 7 R.P.C. 101, at p. 106.

<sup>3</sup> *Challender v. Royle*, 4 R.P.C. 363. *Colley v. Hart*, 7 R.P.C. 101.

It must be  
commenced  
with due  
diligence.

And also  
prosecuted  
with due  
diligence

his patent agent, who said that the particulars of objections disclosed a good prior user. It was held that the patentee had commenced and prosecuted his action for infringement with due diligence, and the fact that he had discontinued it did not preclude him from coming within the proviso, and the action for threats was accordingly dismissed.

Of course, if the case comes within the proviso, the old common law remedy is still open to the person threatened if, which is very difficult, he can prove the statements to have been made *mala fide*.

If the person threatened or suffering from threats is seeking an interlocutory injunction, he should satisfy the Court that he has a *prima facie* case, both that the act complained of is not an infringement, and, if the question is raised that the patent is invalid.<sup>1</sup>

Interlocutory injunction

#### THREATS MADE "PENDENTE LITE."

In the Scotch case of *St. Mungo Manufacturing Co. v. Hutchinson Main & Co., Ltd.* (25 R.P.C. 356), the plaintiffs were in the course of bringing an action for infringement of a registered design. *Pendente lite* they issued circulars stating that the defendants had applied a fraudulent or obvious imitation of their design to golf balls, that they had commenced proceedings against the defendants, and warning retail dealers that if they sold any such golf balls they would be rendering themselves liable to proceedings. It was held that the publication of such circulars *pendente lite* constituted contempt of Court, and they must accordingly be restrained.

<sup>1</sup> *Challender v. Royle*, 4 R.P.C. 363, at p. 372.



# APPENDIX I

## PLEADINGS

### 1. I INDORSEMENT ON WRIT

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

1930 B. No.....

Mr. Justice.....

Between.....A.B.....Plaintiff,  
and.....C.D.....Defendant.

The plaintiff claims—

1. An injunction to restrain the defendant, his servants and agents from infringing the plaintiff's copyright in registered design No....., in Class.....

2. An inquiry as to damages and payment by the defendant to the plaintiff of all sums found due upon such inquiry.

3. Delivery up or destruction on oath of all articles in the possession or under the control of the defendant constructed in infringement of the said registered design.

4. Costs.

### 2. STATEMENT OF CLAIM

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

1930. B. No.....

Mr. Justice.....

Writ issued.....

Between.....A. B.....Plaintiff  
and.....C. D.....Defendant.

### STATEMENT OF CLAIM

1. The plaintiff is the registered proprietor of registered design No..... in class.....

2. The said registered design was at the date of its registration a new and/or original design, and had not been previously published in the United Kingdom.

3. The defendant has, without the licence or written consent of the plaintiff applied the said design or a fraudulent or obvious imitation thereof for the purposes of sale to.....<sup>1</sup>

4. The defendant has sold and offered for sale.....to which the said design or a fraudulent or obvious imitation thereof has been applied well knowing that the said design has been used or applied by him without the consent of the plaintiff.

5. In particular the plaintiff complains of the following acts of the defendant prior to the issue of the writ in this action, and subsequent to the registration of the said design—

(i) The manufacture and sale by the defendant in the ordinary course of his business, between the dates aforesaid of ..... to which the said design had been wrongfully applied as aforesaid.

<sup>1</sup> State articles to which design has been applied.

(ii) The sale by the defendant on or about ..... to E. F. of a ..... to which the said design had been wrongfully applied as aforesaid.

(iii) The offer for sale by the defendant at ..... on ..... of ..... to which the said design had been wrongfully applied as aforesaid.

6. The precise number and dates of the defendant's wrongful acts are not at present known to the plaintiff, but the plaintiff will claim to recover full compensation in respect thereof.

The plaintiff claims—

1. An injunction to restrain the defendant his servants and agents, from infringing the plaintiff's copyright in registered design No. ..... in class .....

2. An inquiry as to damages, and payment by the defendant to the plaintiff of all sums found due upon such inquiry.

3. Delivery up or destruction upon oath of all articles in the possession or under the control of the defendant, constructed in infringement of the said registered design.

4. Costs.

Delivered, etc.

### 3. DEFENCE

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

1930 B. No. ....

Mr. Justice.....

Between ..... A.B. .... Plaintiff,  
and ..... C.D. .... Defendant.

1. The defendant denies that the plaintiff is the registered proprietor of registered design No. .....

2. The said design was not at the date of its registration a new or original design which had not been previously published in the United Kingdom.

3. The defendant has not infringed the alleged copyright in the said registered design as alleged or at all.

4. The said design was not a new or original design at the date of registration thereof by reason of (a) Prior publication, (b) Prior public user, (c) Prior common general knowledge. Particulars of (a) are as follows: The said alleged design had been published in this realm prior to the date of the said registration

(i) By the deposit in the Patent Office library of the following letters patent.

Nationality; Name; Number; Year;

(ii) By the issue of a catalogue by Messrs X & Co., in or about ..... to the trade and public.

Particulars of (b) are as follows—

The said alleged design had been published and publicly used in this realm prior to the date of the said registration by the manufacture and sale by Y & Co. of ..... from ..... down to the date of the said registration in the ordinary course of their business, specimens whereof may be inspected at the offices of the defendant's solicitors.

5. The said registered design was not proper subject matter for registration by reason of (a) the matters set out in paragraph 4 hereof, (b) the fact that the said registered design is not such that

it appeals to and can be judged solely by the eye, but includes a mode or principle of construction, and/or covers something which is in substance a mere mechanical device.

6. If the defendant sold articles to which the said registered design has been applied, which is denied, he did so not knowing that the said articles constituted an infringement of the said registered design, or any registered design, as alleged or at all.

7. The plaintiff has sold articles to which the said registered design was applied not being marked with the prescribed mark, or with the prescribed words or figures denoting that the said design was registered. A specimen of such articles may be inspected at the offices of the defendant's solicitors. The defendant will rely upon the above facts and upon Sect. 54 (1) (b) of the Patents and Designs Acts, 1907-28 as a defence to the plaintiff's claim for damages herein.

#### 4. NOTICE OF MOTION FOR INTERLOCUTORY INJUNCTION

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

1930 B. No.....

Mr. Justice .....

Between.....*A.B.* Plaintiff  
and.....*C.D.* Defendant.

Take notice that this Honourable Court will be moved before Mr. Justice ..... on the ..... day of ..... at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard by counsel on behalf of the above named plaintiff that the defendant his servants and agents be restrained until judgment in this action, or until further order from infringing the plaintiff's copyright in Registered Design No. ..... in Class ..... , and that such further or other order may be made in the premises as to this Honourable Court may seem fit.

Dated.....

#### 5. MOTION TO RECTIFY REGISTER

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

Mr. Justice .....

In the matter of the Patents and Designs Acts, 1907-28; and  
In the matter of Registered Design No. ...., of X & Co., Ltd.

#### NOTICE OF MOTION

Take notice that this Honourable Court will be moved before Mr. Justice ..... on the ..... day of ..... at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard by counsel on behalf of Y. & Co., Ltd., whose registered office is at ..... that the Register of Designs kept under the said Patents and Designs Acts may be rectified by expunging therefrom the said Registered Design ..... in Class ..... , and that such further or other order may be made in the premises as to this Honourable Court may seem fit.

Dated.....

# APPENDIX II

## PATENTS AND DESIGNS ACTS, 1907 AND 1919 (CONSOLIDATED)

[7 EDW. 7. CH. 29; AND 9 & 10 GEO. 5. CH. 80.]

**NOTE.**—The general text of the Act of 1907 is adhered to. The parts repealed by the Act of 1919 are printed in *italics* within brackets, and the substitutions and additions made by that Act in heavier type,

### PART I PATENTS

Certificate of validity questioned and costs thereon.  
**Act of 1919, Section 20.**

35. In an action for infringement of a patent, the court may certify that the [*validity of the patent*] validity of any claim in the specification of the patent came in question; and, if the court so certifies, then in any subsequent action for infringement of such claim the plaintiff in that action on obtaining a final order or judgment in his favour shall, unless the court trying the action otherwise directs, have his full costs, charges, and expenses as between solicitor and client so far as that claim is concerned.

Remedy in case of groundless threats of legal proceedings.  
**Act of 1919, Section 20.**

36. Where any person claiming [*to be the patentee of an invention*] to have an interest in a patent, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of [*any legal rights of the person making such threats*] the patent.

[Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.]

**Act of 1919  
Section 20.**

Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.

### PART II DESIGNS

#### *Registration of Designs*

Application for registration of designs.

49.—(1) The comptroller may, on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original

design not previously published in the United Kingdom, register the design under this Part of this Act.

(2) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(3) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may, except where the refusal is given on a ground mentioned in section seventy-five of this Act, appeal to the [Board of Trade] Court, and the [Board] Court shall, after hearing the applicant and the comptroller, if so required make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(5) A design when registered shall be registered as of the date of the application for registration.

50. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

(a) On the grounds of the design not being a [new and original] new or original design, by reason only that it was so previously registered; or

(b) On the ground of the design having been previously published in the United Kingdom, by reason only that it has been applied to goods of any class in which it was so previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from the previous registration.

51.—(1) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

52.—(1) There shall be kept at the Patent Office a book called the Register of Designs wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.

(3) The register of designs shall be prima facie evidence of any matters by this Act directed or authorized to be entered therein.

Act of 1919,  
Section 20.

Registration  
of designs in  
new classes.

Act of 1919,  
Section 20.

Act of 1919.  
Section 20.

Certificate  
of registration.

Register of  
designs.

Copyright  
on regis-  
tration.

*Copyright in Registered Designs*

53.—(1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the comptroller in the prescribed manner, the comptroller shall on payment of the prescribed fee extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the comptroller in the prescribed manner, the comptroller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

Requirements  
before delivery  
on sale.

54.—(1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(a) (If exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so the comptroller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) Cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Board of Trade by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Board may, if they think fit, by rule under this Act dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as they think fit.

Effect of  
disclosure on  
copyright.

55. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use

or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

56.—(1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorized by the comptroller or by the court, and furnishing such information as may enable the comptroller to identify the design, and shall not be open to the inspection of any person except in the presence of the comptroller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

57.—On the request of any person furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, the comptroller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

58.—(1) At any time after the registration of a design any person may apply to the comptroller for the cancellation of the registration on the ground that the design is used for manufacture exclusively or mainly outside the United Kingdom, and where such an application is made the provisions of this Act with respect to the revocation of patents worked outside the United Kingdom (including those relating to costs) shall apply with the necessary modifications, except that there shall be no appeal from the decision of the comptroller.

(2) Such ground as aforesaid shall be available by way of a defence to an action for infringement of the copyright in the design.]

Inspection of registered designs.

Information as to existence of copyright.

Cancellation of registration of designs used wholly or mainly abroad.

Cancellation of registration of designs.  
Act of 1919,  
Section 14.

58.—(1) At any time after the registration of a design any person interested may apply to the comptroller for the cancellation of the registration of the design, on either of the following grounds—

(a) That the design has been published in the United Kingdom prior to the date of registration;

(b) That the design is applied by manufacture to any article in a foreign country, and is not so applied by manufacture in the United Kingdom to such an extent as is reasonable in the circumstances of the case;

Provided that, if the application be on the last-mentioned ground, and the comptroller is satisfied that the time which has elapsed from the date of registration has been insufficient for such application by manufacture in the United Kingdom, the comptroller may adjourn the application for such time as he may deem sufficient for that purpose; and that in lieu of cancellation, the comptroller may order the grant of a compulsory licence on such terms as he may consider just.

(2) An appeal shall lie from any order of the comptroller under this section to the court, and the comptroller may at any time refer any such application to the court for trial.

Registration of designs to bind the Crown.  
Act of 1919,  
Section 15.  
(See footnote)

58a. The registration of a design shall have to all intents the like effect as against His Majesty the King as it has against a subject;

Provided that the provisions of section twenty-nine of this Act shall apply to registered designs as though those provisions were herein re-enacted and in terms made applicable to registered designs.

#### *Industrial and International Exhibitions*

Provisions as to exhibitions.

59.—(1) The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof; Provided that—

(a) The exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the comptroller the prescribed notice of his intention to do so; and

(b) The application for registration is made before or within six months from the date of the opening of the exhibition.

(2) His Majesty may, by Order in Council, apply this section to any exhibition mentioned in the Order

NOTE.—This section was brought into operation on 23rd April, 1920, by an Order of the Board of Trade made on that date. (Statutory Rules and Orders, 1920, No. 658.)

in like manner as if it were an industrial or international exhibition certified as such by the Board of Trade, and any such Order may provide that the exhibitor shall be relieved from the condition of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the Order.

### *Legal Proceedings*

60.—(1) During the existence of copyright in any design it shall not be lawful for any person—

(a) For the purposes of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds, recoverable as a simple contract debt, or if the proprietor elects to bring an action for the recovery of damages for such contravention, and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly;

Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed one hundred pounds.

61.—The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee, shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patented and of references to the design for reference to the invention.

### PART III GENERAL

#### *Patent Office and Proceedings thereat*

62.—(1) The Treasury may continue to provide for the purposes of this Act and the Trade Marks Act, 1905, an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate

Piracy of  
registered  
design.

Application  
of certain  
provisions of  
the Act as to  
patents to  
designs.

Patent  
Office.  
5 Edw. 7.  
c. 15.

control of the comptroller, who shall act under the superintendence and direction of the Board of Trade.

(3) Any act or thing directed to be done by or to the comptroller may be done by or to any officer authorized by the Board of Trade.

(4) Rules under this Act may provide for the establishment of branch offices for designs at Manchester or elsewhere, and for any document or thing required by this Act to be sent to or done at the Patent Office being sent to or done at any branch office which may be established.

**Officers and clerks.**

63.—(1) There shall continue to be a comptroller-general of patents, designs, and trade marks, and the Board of Trade may, subject to the approval of the Treasury, appoint the comptroller, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may remove any of those officers and clerks.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and those salaries and the other expenses of the execution of this Act and the Trade Marks Act, 1905, shall continue to be paid out of money provided by Parliament.

64. Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

*Fees*

**Fees.**

65. There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to patents and designs under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade, so however that the fees prescribed in respect of the instruments and matters mentioned in the First Schedule to this Act shall not exceed those specified in that Schedule.

*Provisions as to Registers and other Documents  
in Patent Office*

**Trust not to be entered in registers.**

66. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed implied or constructive.

**Inspection of and extracts from registers.**

67. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

**Privilege of reports of examiners.**

68. Reports of examiners made under this Act shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, unless the court

or officer having power to order discovery in such legal proceeding certifies that such production or inspection is desirable in the interests of justice, and ought to be allowed;

Provided that, on application being made by any person in the prescribed form, the comptroller may disclose the result of a search made under section seven or eight of this Act on any particular application for the grant of a patent.

Act of 1919,  
Section 20.

69.—(1) Where an application for a patent has been abandoned, or become void, the specifications and drawings (if any) accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the comptroller.

Prohibition  
of publication  
of specifica-  
tion, drawings  
&c. where  
application  
abandoned, &c.

(2) Where an application for a design has been abandoned or refused the application and any drawings, photographs, tracings, representations, or specimens left in connection with the application shall not at any time be open to public inspection or be published by the comptroller.

70. The comptroller may, on request in writing accompanied by the prescribed fee—

Power for  
comptroller to  
correct  
clerical  
errors.

(a) Correct any clerical error in or in connection with an application for a patent or in any patent or any specification;

(b) Cancel the registration of a design either wholly or in respect of any particular goods in connection with which the design is registered;

(c) Correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of  
assignments  
and trans-  
missions in  
registers.

[71.—(1) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, the comptroller shall, on request and on proof of title to his satisfaction, register him as the proprietor of a patent or design.

(2) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or design, the comptroller shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be.

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, licence, or dealing: Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other personal property.]

Registration of  
assignments,  
&c.  
Act of 1919.  
Section 16.

**71.**—(1) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent or to the copyright in a registered design, he shall make application to the comptroller to register his title, and the comptroller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design and shall cause an entry to be made in the prescribed manner on the register of the assignment, transmission, or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee, or otherwise, to any interest in a patent or design, he shall make application to the comptroller to register his title, and the comptroller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of the Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to or otherwise deal with the patent or design, and to give effectual receipts for any consideration for any such assignment, licence or dealing;

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other personal property.

(4) Except in applications made under section seventy-two of this Act, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of subsections (1) and (2) aforesaid, shall not be admitted in evidence in any court in proof of the title to a patent or copyright in a design or to any interest therein unless the court otherwise directs.

**72.**—(1) The court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging, or varying such entry as it may think fit.

(2) The court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) The prescribed notice of any application under this section shall be given to the comptroller, who shall have the right to appear and be heard thereon, and shall appear if so directed by the court.

(4) Any order of the court rectifying a register shall direct that notice of the rectification be served on the

Rectification  
of registers  
by court.

comptroller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

*Powers and Duties of Comptroller*

73. Where any discretionary power is by or under this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Exercise of  
discretionary  
power by  
comptroller.

73a.—(1) The comptroller shall, in any proceedings before him under this Act, have power by order to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of court.

Costs and  
security for  
costs.  
Act of 1919,  
Section 12.

(2) If any party giving notice of any opposition under this Act, or applying to the comptroller for the revocation of a patent, or giving notice of appeal from any decision of the comptroller under this Act, neither resides nor carries on business in the United Kingdom or the Isle of Man, the comptroller, or in case of appeal to the law officer or the court, the law officer or the court may require such party to give security for the costs of the proceedings or appeal, and in default of such security being given may proceed to treat the proceedings or appeal as abandoned.

74. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to a law officer for directions in the matter.

Power of  
comptroller  
to take direc-  
tions of law  
officers.

75. The comptroller may refuse to grant a patent for an invention, or to register a design, of which the use would, in his opinion, be contrary to law or morality.

Refusal  
to grant  
patent, &c.,  
in certain  
cases.

Act of 1919,  
Section 17.

An appeal shall lie from the decision of the comptroller under this section to the law officer.

76. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which the report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

Annual  
reports of  
comptroller.

*Evidence, &c.*

77.—(1) Subject to rules under this Act in any proceeding under this Act before the comptroller the evidence shall be given by statutory declaration in the absence of directions to the contrary; but in any case in which the comptroller thinks it right so to do, he may take evidence *viva voce* in lieu of or in addition to evidence by declaration or allow any declarant to

Evidence  
before  
comptroller.

**Act of 1919.  
Section 20.**

**Certificate of  
comptroller to  
be evidence.**

**Evidence of  
documents  
in Patent  
Office.**

**Transmission  
of certified  
printed copies  
of specifica-  
tions, &c.**

**Applications  
and notices  
by post.**

**Excluded  
days.**

**Declaration  
by infant,  
lunatic, &c.**

be cross-examined on his declaration. Any such statutory declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

(2) In case any part of the evidence is taken *viva voce*, the comptroller shall, in respect of requiring the attendance of witnesses and taking evidence on oath, and discovery and production of documents, be in the same position in all respects as an official referee of the Supreme Court.

78. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorized by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

79. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, or from patents, specifications, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

80.—(1) Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after they have been accepted or allowed at the Patent Office.

(2) Certified copies of or extracts from any such documents and of any documents so transmitted in pursuance of any enactment repealed by this Act shall be given to any person on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

81. Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office or to the comptroller, or to any other person under this Act, may be sent by post.

82. Where the last day fixed by this Act for doing anything under this Act falls on any day specified in rules under this Act as an excluded day, the rules may provide for the thing being done on the next following day not being an excluded day.

83.—(1) If any person is, by reason of infancy, lunacy, or other disability, incapable of making any declaration or doing anything required or permitted

by or under this Act, the guardian or committee (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the declaration or the doing of the thing.

#### *Register of Patent Agents*

[**84.—(1)** *A person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act or an Act repealed by this Act.*

*Register of patent agents.*

(2) Every person who proves to the satisfaction of the Board of Trade that prior to the twenty-fourth day of December, one thousand eight hundred and eighty-eight, he had been bona fide practising as a patent agent shall be entitled to be registered as a patent agent in pursuance of this Act.

(3) If any person knowingly describes himself as a patent agent in contravention of this section he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

(4) In this section "patent agent" means exclusively an agent for obtaining patents in the United Kingdom.]

*Registration of patent agents.  
Act of 1910,  
Section 18.*

**84.—(1)** No person shall practise, describe himself, or hold himself out, or permit himself to be described or held out, as a patent agent, unless—

(a) In the case of an individual, he is registered as a patent agent in the register of patent agents;

(b) In the case of a firm, every partner of the firm is so registered;

(c) In the case of a company which commenced to carry on business as a patent agent after the seventeenth day of November, nineteen hundred and seventeen, every director and the manager (if any) of the company is so registered;

(d) In the case of a company which commenced to carry on business as a patent agent before that date, a manager or a director of the company is so registered:

Provided that in the last-mentioned case the name of such manager or director shall be mentioned as being a registered patent agent in all professional advertisements, circulars or letters in which the name of the company appears.

(2) Every individual not registered as a patent agent before the fifteenth day of July, nineteen hundred and nineteen, who proves to the satisfaction of the Board of Trade that prior to the first day of August, nineteen hundred and seventeen, he was bona fide practising as a patent agent, whether individually or as member of a firm, or as a manager or director of an incorporated company, shall be entitled to be registered as a patent agent if he makes an application for the purpose within such time as may be fixed by the Board of Trade, unless after giving an applicant an opportunity of being heard the Board of Trade are satisfied that he has whilst so practising been guilty of such misconduct as would have rendered him liable, if his name had been on the register of patent agents, to have his name erased therefrom.

(3) If any person contravenes the provisions of this section, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds, and in the case of a company every director, manager, secretary, or other officer of the company who is knowingly a party to the contravention shall be guilty of a like offence and liable to a like fine.

(4) For the purposes of this section, the expression "patent agent" means a person, firm, or company carrying on for gain in the United Kingdom the business of applying for or obtaining patents in the United Kingdom or elsewhere.

(5) Nothing in this section shall be taken to prohibit solicitors from taking such part as they have heretofore taken in any proceedings under this Act.

(6) No person not registered before the fifteenth day of July, nineteen hundred and nineteen, shall be registered as a patent agent unless he be a British subject.

Agents for  
patents.

85.—(1) Rules under this Act may authorize the comptroller to refuse to recognize as agent in respect of any business under this Act any person whose name has been erased from the register of patent agents, or who is proved to the satisfaction of the Board of Trade, after being given an opportunity of being heard, to have been convicted of such an offence or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the register of patent agents, to have his name erased therefrom, and may authorize the comptroller to refuse to recognize as agent in respect of any business under this Act any company which, if it had been an individual, the comptroller could refuse to recognize as such agent.

(2) Where a company or firm acts as agents, such rules as aforesaid may authorize the comptroller to refuse to recognize the company or firm as agent if any person whom the comptroller could refuse to recognize as an agent acts as director or manager of the company or is a partner in the firm.

(3) The comptroller shall refuse to recognize as agent in respect of any business under this Act any person

who neither resides nor has a place of business in the United Kingdom or the Isle of Man.

*Powers, &c. of Board of Trade*

86.—(1) The Board of Trade may make such general rules and do such things as they think expedient, subject to the provisions of this Act—

Power for  
Board of  
Trade to  
make general  
rules.

(a) For regulating the practice of registration under this Act:

(b) For classifying goods for the purposes of designs:

(c) For making or requiring duplicates of specifications, drawings, and other documents:

(d) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, and other documents:

(e) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(f) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(g) For regulating the keeping of the register of patent agents under this Act:

(h) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2) General rules shall whilst in force be of the same effect as if they were contained in this Act.

(3) Any rules made in pursuance of this section shall be advertised twice in the official journal to be issued by the comptroller, and shall be laid before both Houses of Parliament as soon as practicable after they are made, and if either House of Parliament, within the next forty days after any rules have been so laid before that House, resolves that the rules or any of them ought to be annulled, the rules or those to which the resolution applies shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under the rules or to the making of any new rules.

87.—(1) All things required or authorized under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

Proceedings  
of the Board  
of Trade.

(2) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorized in that behalf by the President of the Board, shall

be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(3) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

**Provision as  
to Order in  
Council.**

88. An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if it had been contained in this Act; but may be revoked or varied by a subsequent Order.

#### *Offences*

**Offences.**

89.—(1) If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

(2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered, he shall be liable for every offence, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding five pounds.

(3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design.

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(5) If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

**Unauthorized  
assumption of  
Royal Arms.**

90.—(1) The grant of a patent under this Act shall not be deemed to authorize the patentee to use the Royal Arms or to place the Royal Arms on any patented article.

(2) If any person, without the authority of His Majesty, uses in connection with any business, trade,

calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive in such manner as to be calculated to lead to the belief that he is duly authorized to use the Royal Arms) he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds:

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing such arms to continue to use such trade mark.

*International and Colonial Arrangements*

91.—(1) If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any invention, design, or trade mark in that state<sup>1</sup> shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign state.

International  
and Colonial  
arrangements.

Provided that—

(a) The application is made, in the case of a patent within twelve months, and in the case of a design or trade mark within four months, from the application for protection in the foreign state; and

(b) Nothing in this section shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this country.

(2) The patent granted for the invention or the registration of a design or trade mark shall not be invalidated—

(a) In the case of a patent, by reason only of the publication of a description of, or use of, the invention; or

(b) In the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design; or

(c) In the case of a trade mark, by reason only of the use of the trade mark,  
in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.

<sup>1</sup> The following amendment in subsection (1) of this section was made by section 1 of the Patents and Designs Act, 1914 (4 & 5 Geo. 5, ch. 18)—

(1) “The rights conferred by section ninety-one of the Patent and Designs Act, 1907, on a person who has applied for protection for any invention, design, or trade mark in a foreign state shall extend to his legal representatives and assignees, and accordingly subsection (1) of that section shall have effect as if after the words ‘any person who has applied for protection for any invention, design, or trade mark in that state’ there were inserted the words ‘or his legal representative or assignee.’”

## COPYRIGHT IN INDUSTRIAL DESIGNS

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act or the Trade Marks Act, 1905: Provided that—

(a) In the case of patents the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the foreign state, shall with the drawings (if any) be open to public inspection at the expiration of that period; and

(b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the Trade Marks Act, 1905.

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them to be applicable, and so long only in the case of each state as the Order in Council continues in force with respect to that state.

(5) Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, [and] or trade marks, patented or registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession, with such variations or additions, if any, as may be stated in the Order.

**Act of 1919,  
Section 20.**

**Provisions  
as to "the  
Court."**

**Act of 1919.  
Section 20.**

**Act of 1919.  
Section 20.**

**Definitions.**

*Definitions*

92.—(1) In this Act, unless the context otherwise requires, "the court" means, subject to the provisions as to Scotland, Ireland, and the Isle of Man, the High Court in England.

(2) Where by virtue of this Act a decision of the comptroller is subject to an appeal to the court, or a petition may be referred or presented to the court, the appeal shall, except in the case of a petition for the revocation of a patent under section twenty-five of this Act, and subject to and in accordance with rules of the Supreme Court, be made and the petition referred or presented to such judge of the High Court as the Lord Chancellor may select for the purpose, [and the decision of that judge shall be final, except in the case of an appeal from a decision of the comptroller revoking a patent on any ground on which the grant of such patent might have been opposed.] An appeal shall not lie from any decision of such judge except in the case of an order revoking or confirming the revocation of a patent.

93. In this Act, unless the context otherwise requires—

"Law officer" means the Attorney-General or Solicitor-General for England: .

"Prescribed" means prescribed by general rules under this Act:

"British possession" does not include the Isle of Man or the Channel Islands:

"Patent" means letters patent for an invention:

[*"Patentee" means the person for the time being entitled to the benefit of a patent.*]

"Patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent:

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act concerning monopolies" and dispensations with penal laws and the "forfeiture thereof"), and includes an alleged invention:

"Inventor" and "applicant" shall, subject to the provisions of this Act, include the legal representative of a deceased inventor or applicant:

[*"Design" means any design (not being a design for a sculpture or other thing within the protection of the Sculpture Copyright Act, 1814) applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined.*]

*34 Geo. 3.  
c. 56.*

"Design" means only the features of shape, configuration, pattern, or ornament, applied to any article by any industrial process or means, whether manual, mechanical, or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction, or anything which is in substance a mere mechanical device:

*Act of 1919,  
Section 19.*

"Article" means (as respects designs) any article of manufacture and any substance artificial or natural, or partly artificial and partly natural:

"Copyright" means the exclusive right to apply a design to any article in any class in which the design is registered:

[*"Proprietor of a new and original design,"*]

*"Proprietor of a new or original design,"*—

*Act of 1919,  
Section 20.*

(a) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(b) Where any person acquires the design or the right to apply the design to any article either exclusively of any other person or otherwise, means,

in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(c) In any other case, means the author of the design;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person:

"Working on a commercial scale" means the manufacture of the article or the carrying on of the process described and claimed in a specification for a patent in or by means of a definite and substantial establishment or organization, and on a scale which is adequate and reasonable under all the circumstances.

**Act of 1910,  
Section 19.**

**Application  
to Scotland.**

*Application to Scotland, Ireland, and the Isle of Man*

94. In the application of this Act to Scotland—

(1) In any action for infringement of a patent in Scotland the provisions of this Act with respect to calling in the aid of an assessor shall apply, and the action shall be tried without a jury unless the court otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts; and for the purposes of the provisions so applied "court of appeal" shall mean any court to which such action is appealed:

(2) Any offence under this Act declared to be punishable on conviction under the Summary Jurisdiction Acts may be prosecuted in the sheriff court:

(3) Proceedings for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only, and service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act:

(4) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland in any proceedings relating to patents or to designs; and with reference to any such proceedings, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of that Court:

[*(5) Notwithstanding anything in this Act, the expression "the Court" shall, as respects petitions for compulsory licences or revocation which are referred by the Board of Trade to the Court, in Scotland, mean any Lord Ordinary of the Court of Session, and shall in reference to proceedings in Scotland for the extension of the term of a patent mean such Lord Ordinary:*]

(5) Notwithstanding anything in this Act, the expression "the Court" shall in reference to proceedings in Scotland for the extension of the term of a patent mean any Lord Ordinary of the Court of Session:

Act of 1919.  
Section 20.

(6) The expression "Rules of the Supreme Court" shall, except in section ninety-two of this Act, mean act of sederunt:

(7) If any rectification of a register under this Act is required in pursuance of any proceeding in a court, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly:

(8) The expression "injunction" means "interdict."

95. In the application of this Act to Ireland—

Application  
to Ireland.

(1) All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only:

(2) The provisions of this Act conferring a special jurisdiction on the court, as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Ireland in any proceedings relating to patents or to designs; and with reference to any such proceedings the term "the Court" means the High Court in Ireland:

(3) If any rectification of a register under this Act is required in pursuance of any proceeding in a court, a copy of the order, decree, or other authority for the rectification shall be served on the comptroller, and he shall rectify the register accordingly.

96. This Act shall extend to the Isle of Man, subject to the following modifications—

Isle of Man.

(1) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man in proceedings for infringement, or in any action or proceeding respecting a patent or design competent to those courts:

(2) The punishment for a misdemeanour under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court:

(3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered, at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

#### *Repeal, Savings, and Short Title*

97. Nothing in this Act shall take away, abridge, Saving for  
or prejudicially affect the prerogative of the Crown in prerogative.

**Repeal and savings.**

relation to the granting of any letters patent or to the withholding of a grant thereof.

98.—(1) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule—

(a) As respects the enactments mentioned in Part I of that schedule, as from the commencement of this Act;

(b) As respects the enactments mentioned in Part II of that schedule, as from the date when rules of the Supreme Court regulating the matters dealt with in those enactments come into operation;

(c) As respects the enactments mentioned in Part III of that schedule, as from the date when rules under this Act regulating the matters dealt with in those enactments come into operation;

and the enactments mentioned in Part II and Part III of that schedule shall, until so repealed, have effect as if they formed part of this Act:

Provided that this repeal shall not affect any convention, Order in Council, rule, or table of fees having effect under any enactment so repealed, but any such convention, Order in Council, rule, or table of fees in force at the commencement of this Act shall continue in force, and may be repealed, altered or amended, as if it had been made under this Act.

(2) Except where otherwise expressly provided, this Act shall extend to all patents granted and all designs registered before the commencement of this Act, and to applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

99. *This Act may be cited as the Patents and Designs Act, 1907, and shall, save as otherwise expressly provided, come into operation on the first day of January, one thousand nine hundred and eight.*

***Provisions of the Patents and Designs Act, 1919,  
not otherwise incorporated*****Construction,  
printing, and  
repeal.  
Act of 1919,  
Section 21.**

21.—(1) This Act shall, except where otherwise expressly provided, apply to patents granted and applications for and specifications relating to patents made and deposited, and designs registered, before as well as after the passing of this Act.

(2) Where by this Act any enactments or words are directed to be added to or omitted from the principal Act, or to be substituted for any other enactments or words in the principal Act, copies of the principal Act printed under the authority of His Majesty's Stationery Office after such direction takes effect may be printed with the enactments or words added or omitted, or substituted for other enactments or words as such direction requires, and with the sections, subsections, and paragraphs thereof numbered in accordance with such directions; and the principal Act shall be construed

as if it had at the time at which such direction takes effect been made with such addition, omission, or substitution.

(3) A reference in any Act of Parliament or other instrument to the principal Act shall, unless the context otherwise requires, be construed to refer to the principal Act as amended by this Act.

(4) The Patents and Designs Act, 1908, is hereby repealed.

22.—(1) This Act may be cited as the Patents and Designs Act, 1919, and the principal Act and this Act may be cited together as the Patents and Designs Acts, 1907 and 1919.

(2) The provisions by sections one and two of this Act substituted for sections twenty-seven and twenty-four of the principal Act shall not come into operation until such time, not being later than one year after the passing of this Act, as may be fixed by order of the Board of Trade, except so far as the provisions so substituted for the said section twenty-four are by subsection (2) of section six of this Act applied to the patents therein mentioned; and the provisions of this Act relating to the terms on which an invention or registered design can be made, used or exercised by or on behalf of a Government department shall not come into operation until such time as may be fixed by order of the Board of Trade; save as aforesaid this Act shall come into operation on the passing thereof.

Short title  
and com-  
mencement.  
Act of 1919.  
(See footnote.)

NOTE.—Under this section the following Orders have been made by the Board of Trade—

Order fixing 21st January, 1920, as the date of coming into operation of section 29 (3) of the Acts (Statutory Rules and Orders, 1920, No. 59).

Order fixing 1st April, 1920, as the date of coming into operation of the provisions by sections 1 and 2 of the Act of 1919 substituted for sections 27 and 24 of the Act of 1907 (Statutory Rules and Orders, 1920, No. 413).

Order fixing 23rd April, 1920, as the date of the coming into operation of sections 29 (1), (2), and (4), and 58A of the Acts (Statutory Rules and Orders, 1920, No. 658).

## SCHEDULES.

Section 65.

## FIRST SCHEDULE

FEES ON INSTRUMENTS FOR OBTAINING  
PATENTS AND RENEWAL(a) *Up to sealing*

	£ s. d.	£ s. d.
On application for provisional protection . . . . .	1 - -	
On filing complete specification . . . . .	3 - -	
	<u>4 - -</u>	

*or*

On filing complete specification with first application . . . . .	4 - -
On the sealing of the patent in respect of investigations as to anticipation . . . . .	1 - -

(b) *Further before end of four years from date of patent*

On certificate of renewal . . . . .	50 - -
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(c) *Further before end of eight years from date of patent*

On certificate of renewal . . . . .	100 - -
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*Or in lieu of the fees of £50 and £100 the following annual fees:*

Before the expiration of the—	£ s. d.
fourth year from the date of the patent . . . . .	10 - -
fifth " " " " " . . . . .	10 - -
sixth " " " " " . . . . .	10 - -
seventh " " " " " . . . . .	10 - -
eighth " " " " " . . . . .	15 - -
ninth " " " " " . . . . .	15 - -
tenth " " " " " . . . . .	20 - -
eleventh " " " " " . . . . .	20 - -
twelfth " " " " " . . . . .	20 - -
thirteenth " " " " " . . . . .	20 - -

**SECOND SCHEDULE**  
**ENACTMENTS REPEALED**  
**PART I**

Section 98

Session and Chapter	Short Title	Extent of Repeal
46 & 47 Vict. c. 57	The Patents, Designs, and Trade Marks Act, 1883.	The whole Act, except sub-sections (5), (6), and (7) of section twenty-six, section twenty-nine, sub-sections (2) and (3) of section forty-seven and section forty-eight.
48 & 49 Vict. c. 63	The Patents, Designs, and Trade Marks (Amendment) Act, 1885.	The whole Act.
49 & 50 Vict. c. 37.	The Patents Act, 1886.	The whole Act.
51 & 52 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888	The whole Act.
1 Edw. 7. c. 18.	The Patents Act, 1901	The whole Act.
2 Edw. 7. c. 34.	The Patents Act, 1902	The whole Act.
7 Edw. 7. c. 28.	The Patents and Designs (Amendment) Act, 1907	The whole Act.
8 Edw. 7. c. 4.	The Patents and Designs Act, 1908.	The whole Act. <span style="float: right;">Act of 1919, Section 21 (4).</span>

**PART II**

Session and Chapter	Short Title	Extent of Repeal
46 & 47 Vict. c. 57	The Patents, Designs and Trade Marks Act, 1883	Subsections (5), (6), and (7) of section twenty-six and section twenty-nine.

**PART III**

Session and Chapter	Short Title	Extent of Repeal
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Subsections (2) and (3) of section forty-seven and section forty-eight.

# APPENDIX III

## STATUTORY RULES AND ORDERS, 1920. NO. 337. DESIGNS

### THE DESIGNS RULES, 1920.

DATED 14TH FEBRUARY, 1920.

By virtue of the provisions of the Patents and Designs Acts, 1907 and 1919 (7 Edw. 7, c. 29 and 9 & 10 Geo. 5, c. 80), hereinafter referred to as "the Acts," the Board of Trade do hereby make the following Rules—

#### PRELIMINARY

1. These Rules may be cited as the Designs Rules, 1920, and shall come into operation from and immediately after the 31st day of March, 1920.

#### INTERPRETATION

Interpretation.

2. In the construction of these Rules any words herein used, the meanings of which are defined by the Acts, shall have the meanings thereby assigned to them respectively.

"Agent" means an agent resident or having a place of business in the United Kingdom or the Isle of Man, duly authorized to the satisfaction of the Comptroller.

"Office" means the Patent Office, Designs Branch, 25 Southampton Buildings, London, W.C.2.

"Journal" means the Illustrated Official Journal (Patents).

"Specimen" means an article of manufacture or a substance with the design applied to it.

"Lodged" means left at the Office or sent through the post by a prepaid letter addressed to the Comptroller at the Office.

#### FEES

Fees.

3. The fees to be paid under the Acts, so far as they relate to designs, shall be those specified in the First Schedule to these Rules.

#### FORMS

Forms.

4. The forms herein referred to are the forms contained in the Second Schedule to these Rules, and such forms shall be used in all cases to which they are applicable and shall be modified as directed by the Comptroller to meet other cases.

#### SETS OF ARTICLES

Sets of articles.

5. "Set" means a number of articles of the same general character ordinarily on sale together, or intended to be used together, all bearing the same design

with or without modifications not sufficient to alter the character or not substantially affecting the identity thereof.

Where there is any doubt whether given articles do or do not constitute a set, the doubt shall be determined by the Comptroller.

#### CLASSIFICATION OF GOODS

6. For the purposes of the registration of designs and of these Rules, goods are classified in the manner appearing in the Third Schedule hereto. Classification of goods.

If any doubt arises as to the class to which any particular description of goods belongs, it shall be determined by the Comptroller.

#### DOCUMENTS

7. Subject to any other directions that may be given by the Comptroller, all applications, notices, papers having representations affixed, and other documents required by the Acts or by these Rules to be lodged shall be upon strong paper, and, except where otherwise required, on one side only, of a size of approximately 13 in. by 8 in., and having on the left-hand part thereof a margin of approximately 2 in. Size, &c., of documents.

8. A document lodged by a firm or partnership may be signed in the firm's name or for and on behalf of the firm or partnership by any one or more members thereof. A document lodged by a body corporate may be signed by a director or by the secretary or other principal officer of such body corporate. Signature of documents.

9. Any application, statement, notice or other document authorized or required to be lodged or to be left, made or given with or to any person under the Acts or these Rules may be sent through the post by a prepaid or official paid letter; any document so sent shall be deemed to have been delivered at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post. Service of documents.

#### ADDRESS

10. Where any person is by the Acts or these Rules bound to furnish the Comptroller with an address, the address given shall in all cases be as full as possible, for the purpose of enabling any person easily to find the place of business of the person whose address is given. Address.

11. Where a registered proprietor of a design lives out of the United Kingdom or the Isle of Man, he may furnish the Comptroller on Form Designs No. 6 with an address for service within the United Kingdom, which shall be entered in the Register. Address for service.

All notices and documents, which under these Rules are required to be sent to the registered proprietor,

shall be deemed duly sent if sent to him at his registered address if that address be within the United Kingdom or the Isle of Man, or where the registered proprietor lives outside the United Kingdom or the Isle of Man, to his address for service, if any, on the Register.

Where a registered proprietor lives out of the United Kingdom or the Isle of Man and has not furnished such address for service, the Comptroller need not send to him any notice which under these Rules the Comptroller is required to send.

Where an applicant lives out of the United Kingdom or the Isle of Man, he shall furnish the Comptroller with an address for service within the United Kingdom, and until he does so the Comptroller need not proceed with the examination of the application.

When such address for service is furnished it shall, on the registration of the design, be entered in the Register as the address for service of the proprietor.

#### AGENTS

##### Agency.

12. An application for registration and all other communications between an applicant and the Comptroller, and between the registered proprietor of a design and the Comptroller, or any other person, may be made by or through an agent.

Any such applicant or proprietor may appoint an agent to represent him in the matter of the design, by signing and sending to the Comptroller an authority in writing to that effect on Form Designs No. 1, or in such other form as the Comptroller may deem sufficient. In case any registered proprietor of a design shall appoint such an agent, service upon such agent of any document relating to such design shall be deemed to be service upon the person so appointing him, and all communications directed to be made to such person in respect of such design may be addressed to such agent.

The Comptroller shall not be bound to recognize as such agent, or to receive further communications in respect of any business under the Acts relating to designs from any person whose name, by reason of his having been adjudged guilty of conduct discreditable to a patent agent has been erased from the register of patent agents kept under the provisions of the Acts and not since restored, or any person who is proved to the satisfaction of the Board of Trade, after being given an opportunity of being heard, to have been convicted of such an offence or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the register of patent agents, to have his name erased therefrom, or any company, which if it had been an individual, the Comptroller could refuse to recognize as agent, or any company or firm, if any person whom the Comptroller could refuse to recognize as an agent acts as director or manager of the company or is a partner in the firm. In any particular case, the

Comptroller may, if he think fit, require the personal signature or presence of an applicant or other person.

#### APPLICATION FOR REGISTRATION

13. An application for registration of a design shall be signed by the applicant for registration or by his agent.	Signature of application.
14. Except as regards applications in Classes 13, 14, and 15, an application for registration of a design shall be lodged at the Office, and (except as regards applications for lace designs in Class 9) shall be on Form Designs No. 2, or in the case of a set on Form Designs No. 3.	Form of application.
15. An application for registration of a lace design in Class 9 shall be on Form Designs No. 4, or in the case of a set on Form Designs No. 5.	Lace designs.
16. An application shall state the Class in which the design is to be registered, and where it is desired to register the same design in more than one class, a separate application shall be made in each class. In that case each application shall be numbered separately, and shall be treated as a separate and distinct application except in the case of an application made under the provisions of Section 50 of the Acts.	Class.
17. Every application shall state the Article or articles to which the design is to be applied and where the Comptroller so requires, the applicant shall further state for what purpose the article to which the design is to be applied is used and the material or the predominating material of which the article is made.	Application of design.
18. The applicant may, and shall if required by the Comptroller in any case so to do, endorse on the application and each of the representations a brief statement of the novelty he claims for his design.	Statement of novelty.
19. When an application is made under the provisions of Section 50 of the Acts for the registration of a design which has already been registered in one or more classes, the application shall contain the number or numbers of the registration or registrations already effected.	Application under Section 50.
20. Except as regards applications in Classes 13, 14, and 15, there shall be furnished in connection with an application for the registration of a design to be applied to a single article, three exactly similar representations of the design, in a form satisfactory to the Comptroller, or three specimens.	Representations.
21. There shall be furnished in connection with an application for the registration of a design to be applied to a set, or in connection with an application in any one of the Classes 13, 14, and 15, four exactly similar representations of the design, in a form satisfactory to the Comptroller, or four specimens.	Representations for set, and in Classes 13, 14, and 15.
22. When the design is to be applied to a set, each of the representations accompanying the application should show all the various arrangements in which	Representations for set.

Nature of representations.

Drawings, &c., must be in ink.

Special representations.

Words, &c., on designs.

Repeat of pattern.

Specimens of designs.

Representations of living persons or persons recently dead.

Objections.

Decision of Comptroller.

Date for Appeal.

it is proposed to apply the design to the articles included in the set.

23. Each representation of the design, whether to be applied to a single article or to a set of articles, must be upon paper of the prescribed size and not on cardboard, and must appear on one side only of the paper. The figure or figures must be placed in an upright position on the sheet. When more figures than one are shown, these should where possible be on one and the same sheet, and each must be designated (e.g. perspective view, front view, side view).

24. When drawings or tracings are furnished, they must be in ink, and if on tracing cloth or tracing paper must be mounted on paper of the prescribed size.

25. When the specimens are not, in the Comptroller's opinion, of a kind which can be conveniently pasted into books, representations shall be furnished in place thereof.

26. Where words, letters or numerals are not of the essence of the design, they shall be removed from the representations or specimens; where they are of the essence of the design the Comptroller may require the insertion of a disclaimer of any right to their exclusive use.

27. Each representation of a design which consists of a repeating surface pattern must show the complete pattern and a sufficient portion of the repeat in length and width, and shall not be of less size than 7 in. by 5 in.

28. Where representations are supplied, the Comptroller may at any time require specimens or additional representations.

29. Where the names or representations of living persons appear on a design, the Comptroller shall, if he so require, be furnished with consents from such persons before proceeding to register the design. In the case of persons recently dead the Comptroller may call for consents from their legal representatives before proceeding with registration of a design on which their names or representations appear.

#### PROCEDURE ON RECEIPT OF APPLICATION

30. If after consideration of the application by the Comptroller any objections appear, a statement of these objections shall be sent to the applicant in writing, and unless within one month the applicant applies for a hearing, he shall be deemed to have withdrawn his application.

31. The decision of the Comptroller at such hearing as aforesaid shall be communicated to the applicant in writing, and if he objects to such decision, and desires to appeal, he shall within one month apply, upon Form Designs No. 7, requiring the Comptroller to state in writing the grounds of his decision and the materials used by him in arriving at the same.

32. Upon receipt of such form the Comptroller shall send to the applicant such statement as aforesaid in

writing and the date when such statement is sent shall be deemed to be the date of the Comptroller's decision for the purpose of appeal.

#### NON-COMPLETION

33. Where an application for registration of a design is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Comptroller shall give notice to the applicant in writing of such non-completion, and if the applicant has an agent, shall send a duplicate of such notice to such agent. If after fourteen days from the date when such notice was sent, the application is not completed, the application shall be deemed to be abandoned, unless application is made on Form Designs No. 8 for an extension of time, not exceeding three months, within which the application for registration may be completed.

Non-comple-  
tion within  
12 months.

#### DEATH OF APPLICANT

34. In the case of the death of any applicant for the registration of a design after the date of his application, and before the design applied for has been entered in the Register, the Comptroller may on being satisfied of the applicant's death, enter in the Register, in place of the name of such deceased applicant, the name, address, and nationality of the person owning the design, on such ownership being proved to the satisfaction of the Comptroller.

Death of  
applicant  
before  
registration.

#### EXTENSION OF PERIOD OF COPYRIGHT

35. If the proprietor of a registered design intends to apply for an extension of the period of copyright beyond the first period of five years, he shall apply before the expiration of the first period of five years on Form Designs No. 9. An application for an enlargement of time, not exceeding three months, for payment of any fee under this Rule shall be made on Form Designs No. 11.

Extension of  
period of  
copyright  
beyond first  
five years.

36. If the proprietor of a registered design intends to apply for an extension of the period of copyright beyond the second period of five years, he shall apply before the expiration of the second period of five years on Form Designs No. 10. An application for an enlargement of time, not exceeding three months, for payment of any fee under this Rule shall be made on Form Designs No. 11.

Extension of  
period of  
copyright  
beyond  
second five  
years.

37. The proprietor of any registered design may pay all or any of the prescribed fees for obtaining an extension of the period of copyright in advance.

Payment of  
fees in ad-  
vance.

#### ASSIGNMENTS, &c.

38. Where a person becomes entitled by assignment, transmission, or other operation of law to the copyright

Joint request  
for entry of  
assignment,  
&c.

## COPYRIGHT IN INDUSTRIAL DESIGNS

**Application  
for entry of  
assignment by  
subsequent  
proprietor.**

**Particulars  
in application.**

**Copies for  
office.**

**Production of  
Certificate of  
Registration.**

**Entry on  
register.**

**Removal of  
name.**

**Change of  
name.**

**Alteration of  
address in  
register.**

**Correction  
by applicant.**

**Correction by  
proprietor.**

in a registered design, or as mortgagee, licensee or otherwise to any interest in a design, he may, conjointly with the registered proprietor, make application to the Comptroller on Form Designs No. 12, or in the case of a design registered in class 9 on Form Designs No. 13 to register his title.

39. Where a person becomes entitled to the copyright in a design or to any interest therein in the manner referred to in Rule 38 and no conjoint application as therein mentioned is made, he shall make application to the Comptroller on Form Designs No. 14 to register his title.

40. An application under Rule 38 or Rule 39 shall contain the name, address, and nationality of the person claiming to be entitled together with full particulars of the instrument if any under which he claims, and such instrument shall be produced for inspection by the Comptroller.

41. The Comptroller may in any case require an attested copy of any instrument produced for inspection in proof of title.

42. The Comptroller may, if he think fit, require the production of the original certificate of registration in connection with an application made in pursuance of Rule 38 or of Rule 39.

43. When the comptroller is satisfied as to the applicant's title he shall cause the applicant to be registered as proprietor, mortgagee, licensee or as otherwise entitled to an interest in the design and shall record in the Register such particulars as he may consider necessary of the instrument, if any, under which the title was acquired.

44. Where the name of a person is entered in the Register as mortgagee or licensee, such person may on lodging Form Designs No. 15 have a note entered in the Register that he no longer claims to be mortgagee or licensee, as the case may be.

45. When the registered proprietor of a design changes his name, he shall make application for entry of such change of name on Form Designs No. 16.

## ALTERATION OF ADDRESS

46. Every registered proprietor of a design who alters his address or his address for service, shall forthwith apply to the Comptroller on Form Designs No. 17, and the Comptroller shall alter the Register accordingly.

## CORRECTION OF CLERICAL ERRORS

47. Where an applicant desires to correct a clerical error in his application, he shall lodge a Form Designs No. 18.

48. Where the registered proprietor of a design desires to correct a clerical error under Section 70 of the Acts, he shall lodge a Form Designs No. 18.

**CANCELLATIONS UNDER SECTION 70(b)**

49. Where the registered proprietor of a design desires to cancel his registration, he shall lodge a Form Designs No. 19.

Cancellation of design.

50. Cancellation may also be effected by the trustee in bankruptcy of the registered proprietor or where the registered proprietor is a company in liquidation by the liquidator or in any other case where the request is made by a person whom the Comptroller may decide to be entitled to act in the name of the registered proprietor. In such cases Form Designs No. 19 shall be lodged, modified as the Comptroller directs.

Cancellation by trustee in bank-ruptcy, &amp;c.

**DISCRETIONARY POWER**

51. Before exercising any discretionary power given to the Comptroller by the Acts or these Rules adversely to any person, the Comptroller shall, if so required, hear the person who will be affected by the exercise of such power.

Hearing.

52. An application for a hearing shall be made within one month from the date when the matter on which the Comptroller is called on to exercise discretionary power has arisen.

Application for hearing.

53. Upon receiving such application, the Comptroller shall give the person applying ten days' notice of a time when he may be heard by himself or his agent.

Notice of hearing.

Within five days from the date when such notice would be delivered in the ordinary course of post, the person applying shall notify the Comptroller whether or not he intends to be heard on the matter.

Notification of decision.

54. The decision of the Comptroller in the exercise of any such discretionary power, as aforesaid, shall be notified to the person affected.

**SEARCHES**

55. Where any person desires to obtain the information which he is entitled to obtain under Section 57 of the Acts, and can furnish the registration number of the design, he shall lodge Form Designs No. 20, and the Comptroller will thereafter furnish him with the information aforesaid.

Search under Sect. 57.

Where the applicant is unable to furnish the registration number of the design, he shall lodge Form Designs No. 21 together with such information as he is in possession of, and the Comptroller will thereupon make such search in the class indicated as may be possible on the information supplied, and will furnish such information as can be afforded. Where Form Designs No. 21 is accompanied by a representation or specimen of the design, such representation or specimen shall be furnished in duplicate.

56. The Comptroller may, if Form Designs No. 22 be lodged, cause a search to be made among the registered designs and state whether any design accompanying such form and to be applied to goods in any

Search among regis-tered designs.

particular class appears to be identical with, or closely resembles any registered design applied to such goods of which the copyright is still existing. The design accompanying Form Designs No. 22 shall be furnished in duplicate.

#### HOURS OF INSPECTION

Hours of inspection.

57. The Office shall be open to the public every weekday, except Saturday, between the hours of ten and four, and on Saturday between the hours of ten and one, except on the days following—

Christmas Day, Good Friday, the day observed as His Majesty's Birthday, the days observed as days of public fast or thanksgiving, or as holidays at the Bank of England, and days which may from time to time be notified by a placard posted in a conspicuous place at the Office.

#### POWER TO DISPENSE WITH EVIDENCE

Dispensing with evidence.

58. Where under these Rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, and upon the production of such other evidence and subject to such terms as he may think fit, to dispense with any such act or thing, document, declaration, or evidence.

#### AMENDMENTS

Amendment of documents.

59. Any document or drawing or other representation of a design may be amended, and any irregularity in procedure, which in the opinion of the Comptroller may be obviated without detriment to the interests of any person, may be corrected, if the Comptroller think fit, and on such terms as he may direct.

#### ENLARGEMENT OF TIME

Enlargement of time.

60. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Comptroller if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct, and such enlargement may be granted though the time has expired for doing such act or taking such proceeding.

Excluded days.

61. Whenever the last day fixed by the Acts or by these Rules for doing anything shall fall on a day when the Office is not open, or on a Saturday, which days shall be excluded days for the purposes of the Acts

and these Rules, it shall be lawful to do any such act or thing on the day next following such excluded day, or days if two or more of them occur consecutively.

#### CERTIFICATE BY COMPTROLLER

62. Where a certificate is required for the purpose of any legal proceeding, or other special purpose, as to any entry, matter, or thing which the Comptroller is authorized by the Acts, or these Rules to make or do, the Comptroller may, on the lodging of a Form Designs No. 23, give such certificate, which shall also specify on the face of it the purpose for which it has been issued as aforesaid.

Certificate for use in legal proceedings or other purpose.

#### MARKING OF ARTICLES

63. Before delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall cause each such article to be marked with the word REGISTERED or with the abbreviation REGD or with the abbreviation RD, as he may choose, and also (except in the case of articles to which have been applied designs registered in Classes 9, 13, 14 and 15) with the number appearing on the certificate of registration; but the requirements of the Acts and Rules as to the marking of articles to which registered designs are applied are dispensed with as regards printed cotton piece goods except handkerchiefs.

Registration mark.

#### REGISTER OF DESIGNS AND INSPECTION OF REGISTERED DESIGNS

64. When a design is accepted, there shall be entered in the Register, in addition to the particulars prescribed by the Acts, such other particulars as the Comptroller may deem necessary.

Registering design.

65. The period under Section 56 of the Acts during which a design shall not be open to inspection, except as provided in that section, shall be, as regards designs in Classes 13, 14, and 15, five years and as regards designs in other classes, two years from the date of the original registration thereof.

Inspection of registered designs.

#### CANCELLATION OF REGISTRATION OF DESIGNS UNDER SECTION 58

66. An application for the cancellation of the registration of a design under Section 58 of the Acts shall be made on Form Designs No. 24. Such application shall be accompanied by an unstamped copy and a statement in duplicate setting out fully the nature of the applicant's interest and the facts upon which he bases his case and the relief which he seeks. Copies of the application and the statement of case will be transmitted by the Comptroller to the registered proprietor.

Cancellation of registration of designs under Sect. 58.

67. If the registered proprietor is desirous of opposing the application, he shall, within 14 days of the

Counter statement.

## COPYRIGHT IN INDUSTRIAL DESIGNS

**Applicant's evidence.**

receipt of such copies or such further time as the Comptroller may allow, leave at the Office a counter-statement fully setting out the grounds on which the application is to be opposed and, on so leaving, shall deliver to the applicant a copy thereof.

**Proprietor's evidence.**

68. The applicant shall, within 14 days from the delivery of such copy or within such further time as the Comptroller may allow, leave at the Office evidence by way of a statutory declaration in support of his case and, on so leaving, shall deliver to the registered proprietor a copy thereof.

**Evidence in reply.**

69. Within 14 days from the delivery of such copy or such further time as the Comptroller may allow, the proprietor may leave at the Office statutory declarations in answer and, on so leaving, shall deliver to the applicant a copy thereof and within 14 days from such delivery or within such further time as the Comptroller may allow, the applicant may leave at the Office statutory declarations in reply and, on so leaving, shall deliver to the proprietor a copy thereof. Such last-mentioned declarations shall be confined to matters strictly in reply.

**Closing of evidence.**

70. No further evidence shall be left on either side except by leave or on requisition of the Comptroller.

**Hearing.**

71. On completion of the evidence, or at such other time as he may see fit, the Comptroller shall appoint a time for the hearing of the case, and give the parties ten days' notice at least of such appointment, and, in the event of his deciding to take evidence *viva voce* in lieu of, or in addition to, the evidence by declaration, or to allow any declarant to be cross-examined on his declaration, he may require the attendance of any declarant or other person whose evidence he may consider desirable. If either party does not desire to be heard, he shall as soon as possible notify the Comptroller to that effect. If either party desires to be heard he must leave Form Designs No. 25 at the Office. The Comptroller may refuse to hear either party who has not left Form Designs No. 25 prior to the date of the hearing.

**Costs on uncontested application.**

72. In the event of an application for the cancellation of the registration of a design being uncontested by the proprietor, the Comptroller in deciding whether costs should be awarded to the applicant shall consider whether proceedings might have been avoided if reasonable notice had been given by the applicant to the registered proprietor before the application was filed.

**Notice of exhibition.**

## INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

73. Any person desirous of exhibiting a design, or any article to which a design has been applied, at an industrial or international exhibition, which has been duly certified as such by the Board of Trade, or of publishing a description of a design during the period

of the holding of such an exhibition, shall give the Comptroller notice, on Form Designs No. 26, of his intention to exhibit the design or article or to publish a description of the design, as the case may be. For the purpose of identifying the design in the event of an application to register the same being subsequently made, the person lodging Form Designs No. 26 shall supply a brief description of the nature thereof, accompanied by a sketch, drawing, or specimen, and shall supply such other information as the Comptroller may in each case require.

#### STATUTORY DECLARATIONS

74. The statutory declarations required by these Rules, or used in any proceedings thereunder, shall be headed in the matter or matters to which they relate, and shall be drawn up in the first person, and shall be divided into paragraphs consecutively numbered, and each paragraph shall, so far as possible, be confined to one subject. Every statutory declaration shall state the description and true place of abode of the person making the same, and shall bear the name and address of the person leaving it, and shall state on whose behalf it is left.

Form, &c., of  
statutory  
declaration.

75. Statutory declarations shall be made and subscribed as follows—

(a) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorized by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding;

(b) In any other part of His Majesty's dominions, before any court, judge, justice of the peace, or any officer authorized by law to administer an oath there for the purpose of a legal proceeding; and

(c) If made out of His Majesty's dominions before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a notary public, or before a judge or magistrate.

Manner in  
which, and  
person before  
whom, de-  
claration is  
to be taken.

76. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorized to take such declaration in testimony of such declaration having been made and subscribed before him, may be admitted by the Comptroller without proof of the genuineness of any such seal or signature, or of the official character of such person or his authority to take such declaration.

Notice of seal  
of officer  
taking de-  
claration to  
prove itself.

#### DESIGNS IN CLASSES 13, 14, AND 15

77. All applications for registration of designs in Classes 13, 14, and 15 shall be lodged at the Office or Application at  
Manchester.

## COPYRIGHT IN INDUSTRIAL DESIGNS

**Manchester Office.**

**Applications in duplicate.**

**Form of application for designs other than checks or stripes.**

**Form of application for checks or stripes.**

**Manchester Register.**

**Alteration of register.**

**Notice of dispute.**

left at or sent to the Manchester Branch Office, at the option of the applicant.

78. Until the Board of Trade shall otherwise direct, the Manchester Branch Office (hereinafter called the Manchester Office) shall be at 108 Deansgate, Manchester, and applications for registration of designs in Classes 13, 14, and 15, and all communications intended to be made at or sent to the Manchester Office shall be addressed to the Keeper of Cotton Marks (hereinafter called the Keeper), at 108 Deansgate, Manchester.

79. All applications for registration of designs in Classes 13, 14, and 15 shall be in duplicate, and if the application be lodged at the Office, one copy shall forthwith be sent by the Comptroller to the Keeper; if the application be addressed to the Keeper, he shall forthwith send one copy to the Comptroller. One of the forms of application shall be stamped and the other unstamped.

80. Applications in Classes 13 and 14 for registration of designs shall be made on Form Designs (Manchester) No. 1.

81. Applications in Class 15 for registration of designs consisting substantially of checks or stripes only, shall be made on Form Designs (Manchester) No. 2. If any doubt arises as to whether a design presented for registration on Form Designs (Manchester) No. 2 is a design consisting substantially of checks or stripes only, that doubt shall be determined by the Comptroller.

82. There shall be kept at the Manchester Office a Register, to be called the Manchester Register, wherein the entries made shall be duplicates of the entries in the Register at the Office relating to designs registered in Classes 13 and 14 in the Third Schedule to the Designs Rules, 1890, and of those registered in Classes 13, 14, and 15 in the Third Schedule to the Designs Rules, 1908,<sup>1</sup> of which the copyright shall be existing on the 31st March, 1920, and of those which shall be made on that date and thereafter relating to designs registered in Classes 13, 14, and 15.

83. When any alteration or addition is made at the Office of or to an entry in the Register relating to a design included in those mentioned in Rule 82, the Comptroller shall forthwith give notice thereof to the Keeper, who shall alter the Manchester Register accordingly.

84. Where a dispute arises with reference to a design entered in the Manchester Register, the parties thereto may give notice (in duplicate) to the Keeper on the Form Designs (Manchester) No. 3, and he shall make a note in the Manchester Register of such request and shall send a copy of the note to the Comptroller together with one copy of the notice. One copy of the Form

<sup>1</sup> S.R. & O., 1907, No. 949.

Designs (Manchester) No. 3 shall be stamped and the other unstamped.

85. All documents under these Rules shall, when they relate to designs in Classes 13, 14, and 15, be in duplicate, and may be lodged at the Office or left at or sent to the Manchester Office, at the option of the applicant or other person lodging or leaving or sending the same. All documents which the Comptroller is directed to send may be sent from the Manchester Office by the Keeper when they relate to designs in Classes 13, 14, and 15. When any document bears a fee-stamp, the duplicate may be unstamped.

Procedure at  
Manchester.

#### APPLICATIONS TO AND ORDERS OF THE COURT

86. Four clear days' notice of every application to the Court under Section 72 of the Acts for rectification of the Register of Designs shall be given to the Comptroller.

Notice to  
Comptroller  
of application  
to rectify  
register.

87. Where an order has been made by the Court in any case under the Acts, the person in whose favour such order has been made, or such one of them, if more than one, as the Comptroller may direct, shall forthwith serve on the Comptroller an Office copy of such order, together with Form Designs No. 28, if required. The register may, if necessary, thereupon be rectified or altered by the Comptroller.

Order of  
Court.

88. Whenever an order is made by the Court under the Acts, the Comptroller may, if he thinks that the effect of such order should be made public, advertise a notice thereof in the Journal.

Publication  
of Order of  
Court.

#### DESIGNS EXCLUDED FROM PROTECTION UNDER COPYRIGHT ACT, 1911

89. A design shall be deemed to be used as a model or pattern to be multiplied by any industrial process within the meaning of Section 22 of the Copyright Act, 1911—

Designs ex-  
cluded from  
protection  
under  
Copyright  
Act, 1911  
(1 & 2 Geo.  
5. c. 46).

(a) When the design is reproduced or is intended to be reproduced in more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set, as defined by Rule 5 of these Rules;

(b) Where the design is to be applied to (1) printed paper hangings, (2) carpets, floor cloths, or oil cloths, manufactured or sold in lengths or pieces, (3) textile piece goods, or textile goods manufactured or sold in lengths or pieces, (4) lace, not made by hand.

#### REPEAL

90. All general rules relative to designs heretofore made by the Board of Trade under the Patents and Designs Act, 1907, and in force on the 31st March,

Repeal.

1920, shall be and they are hereby repealed as from that date, without prejudice, nevertheless, to anything done under such rules, or to any application or other matter then pending.

Dated this 14th day of February, 1920.

*A. C. Geddes,*  
President of the Board of Trade.

## SCHEDULES

*First Schedule*

## FEES

The following fees shall be paid under the Acts, so far as they relate to designs. Such fees must in all cases be paid before or at the time of the doing of the matter in respect of which they are to be paid—

Subject or Proceeding	Amount	Corresponding Form
1. On application to register one design to be applied to a single article in a class, not being lace, and except articles in classes 13 to 15 . . . . .	f s. d.	
2. On application to register one design to be applied to a set of articles in class, not being lace . . . . .	10 — —	Designs No. 2
3. On application to register one design to be applied to lace or to register one design in class 15 . . . . .	1 — —	Designs No. 3.
4. On application to register one design to be applied to a set of lace articles . . . . .	2 6	Designs No. 4 or Designs (Manchester) No. 2
5. On application to register one design in class 13 or class 14 . . . . .	5 — —	Designs No. 5
6. On application to Comptroller to state grounds of decision and materials used under Rule 31 . . . . .	5 — —	Designs (Manchester) No. 1
7. On application for extension of time within which an application for registration of a design may be completed:	10 — —	Designs No. 7
Not exceeding one month . . . . .	10 — —	Designs No. 8.
" " two months . . . . .	1 — —	" "
" " three months . . . . .	1 10 — —	" "
8. On extension of period of copyright under section 53 (2) . . . . .	2 — —	Designs No. 9.
9. On extension of period of copyright under section 53 (3) . . . . .	5 — —	Designs No. 10.
10. On application for enlargement of time for payment of fee for extension of copyright:		
Not exceeding one month . . . . .	10 — —	Designs No. 11.
" " two months . . . . .	1 — —	" "
" " three months . . . . .	1 10 — —	" "
11. On joint application to enter name of subsequent proprietor, &c., made within six months from date of acquisition of proprietorship, &c., or the coming into force of these		

Subject or Proceeding	Amount	Corresponding Form
Rules: In respect of one design . . . . .	£ 10 - -	Designs No. 12 or 13.
For each additional design . . . . .	2 6	
12. On joint application to enter name of subsequent proprietor, &c., made <i>after</i> six months from date of acquisition of proprietorship, &c., and the coming into force of these Rules:		
In respect of one design . . . . .	10 - -	" — "
For each additional design . . . . .	2 6	" — "
13. On application to enter name of subsequent proprietor, &c., under Rule 39, made <i>within</i> six months from date of acquisition of proprietorship, &c., or the coming into force of these Rules:		
In respect of one design . . . . .	10 - -	Designs No. 14.
For each additional design . . . . .	2 6	
14. On application to enter name of subsequent proprietor, &c., under Rule 39 made <i>after</i> six months from date of acquisition of proprietorship, &c., and the coming into force of these Rules		
In respect of one design . . . . .	10 - -	" — "
For each additional design . . . . .	2 6	" — "
15. On application of mortgages, licensee, or other person having registered interest for removal of his name . . . . .	1 - -	Designs No. 15.
16. On application to enter change of name of registered proprietor on the Register in respect of each entry . . . . .	10 -	Designs No. 16.
17. On application for entry of address for service or of new address in respect of each entry . . . . .	5 -	Designs No. 6 or 17.
18. On application to correct clerical error . . . . .	10 -	Designs No. 18.
19. On application by proprietor or his representative for cancellation . . . . .	5 -	Designs No. 19.
20. On application for search under section 57 when registration number is supplied . . . . .	5 -	Designs No. 20.
21. On application for search under section 57 when registered number is not supplied . . . . .	10 -	Designs No. 21.
22. On application for search under Rule 56 . . . . .	10 -	Designs No. 22.

Subject or Proceeding	Amount	Corresponding Form
23. On application for Certificate of Comptroller for legal proceedings or other special purpose . . .	£ s. d.	
	10 - -	Designs No. 23.
24. On application for cancellation under section 58 . . .	2 - -	Designs No. 24.
25. On notice that hearing of an application for cancellation under section 58 will be attended . . .	1 - -	Designs No. 25.
26. On notice to Comptroller of intended exhibition of an unregistered design . . .	5 -	Designs No. 26.
27. On notice to Keeper under Rule 84 . . .	5 -	Designs (Manchester) No. 3.
28. On appeal from Comptroller to Law Officer in respect of each decision appealed against . . .	3 - -	Designs No. 27.
29. For each entry in the Register of an alteration in pursuance of an Order of Court . . .	10 - -	Designs No. 28.
30. Copy of Certificate of Registration, each copy . . .	10 - -	Designs No. 29.
31. Inspection of Register or design where inspection is permitted, except inspection under the second paragraph of section 56(1)	1 -	—
32. Office copy of design . . .	cost according to agreement.	—
33. For Office copy of documents, every 100 words . . .	6 (but never less than 1s.)	—
34. For certifying Office copies, MSS or printed . . .	2 6	—

The fees to be paid on any proceeding at the Manchester Office shall be the same as for the similar proceeding at the London Office.

Dated this 14th day of February, 1920.

*A. C. Geddes,*  
President of the Board of Trade.

Approved,

*James Parker,*

*J. Towyn Jones,*

Lords Commissioners of  
His Majesty's Treasury.

*Second Schedule***FORMS**

Subject	Page	Corre-sponding Fee
Authorization of agent . . . . .	19	—
Application for registration of design, not being lace and except articles in classes 13 to 15 . . . . .	20	1
Application for registration of set of designs, not being lace . . . . .	21	2
Application for registration of a design to be applied to lace . . . . .	22	3
Application for registration of design to be applied to a set of lace articles . . . . .	23	4
Application for entry of address for service in Register . . . . .	24	17
Request for statement of grounds of decision under Rule 31 . . . . .	25	6
Application for extension of time within which an application for registration of a design may be completed . . . . .	26	7
Extension of copyright for second period . . . . .	27	8
Extension of copyright for third period . . . . .	28	9
Application for enlargement of time for payment of fee for extension of copyright . . . . .	29	10
Joint request by registered proprietor and assignee, &c., to enter the name of assignee, &c., in the Register . . . . .	30	11 OR 12
Joint request by registered proprietor and assignee of design in class 9 to enter the name of assignee in the Register . . . . .	31	11 OR 12
Request to enter name of subsequent proprietor, &c., in the Register under Rule 39 . . . . .	32	13 OR 14
Application under Rule 44 to vacate entry of name of mortgagee or licensee in Register . . . . .	33	15
Application to enter change of name of registered proprietor on the Register . . . . .	34	16
Application for alteration of address or address for service in Register . . . . .	35	17
Request for correction of clerical error in application to register, or for correction of clerical error under section 70 . . . . .	36	18
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Request for search under section 57 when registration number is supplied . . . . .	38	20
Request for search under section 57 when registration number is not supplied . . . . .	39	21
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Request for certificate for use in legal proceedings or other special purpose . . . . .	41	23

## APPENDIX III

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Subject	Page	Corre-sponding Fee
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Notice that hearing of application for cancellation of registration of a design will be attended . . . . .	43	25
Notice of intended exhibition of an unregistered design . . . . .	44	26
Application for registration of design in class 13 or class 14 . . . . .	45	5
Application for registration of a design in class 15 . . . . .	46	3
Notice to Keeper under Rule 84 . . . . .	47	27
Appeal from Comptroller to the Law Officer . . . . .	48	28
Request for the Register to be altered in pursuance of an Order of the Court . . . . .	49	29
Application for copy of Certificate of Registration	50	30

**FORM DESIGNS No. I.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****AUTHORIZATION OF AGENT**

(a) Here insert name and address of agent.

I (or We) have appointed (a).....  
.....

of .....

.....

(b) Here state the particular purpose for which the agent is appointed.

to act as my (or our) agent for (b).....  
.....

and request that all notices, requisitions, and communications relating thereto may be sent to such agents at the above address. I (or We) revoke all previous authorizations, if any.

(c) Here state nationality.

I (or We) hereby declare that I am (or we are) a (c)  
.....

(d) To be signed by the person appointing the agent.

(d).....

Address.....

Dated this.....day of.....19.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

**FORM DESIGNS No. 2.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****APPLICATION FOR REGISTRATION OF DESIGN  
(NOT BEING LACE AND EXCEPT ARTICLES IN  
CLASSES 13 TO 15)**

<b>DESIGNS. 10s.</b>
--------------------------

You are hereby requested to register the accompanying  
 design in Class....., in the name of (a).....  
 .....  
 of .....

(a) Here insert in full the name, address, and nationality of the applicant or applicants.

.....  
 who claims to be the proprietor thereof.

The design is to be applied to.....  
 .....  
 .....

(b) The design has been previously registered in Classes..... under No. ....

(b) Strike out these words if no previous registration has been effected.

(Signed) .....

Dated this.....day of.....19.....

To the Comptroller,  
 The Patent Office, Designs Branch,  
 25 Southampton Buildings, Chancery Lane,  
 London, W.C.2.

N.B.—THREE exactly similar representations or specimens of the design should accompany this Form.

FORM DESIGNS NO. 3.

PATENTS AND DESIGNS ACTS, 1907 AND 1919

**DESIGNS.**  
£1.

**APPLICATION FOR REGISTRATION OF DESIGN TO  
BE APPLIED TO A SET (NOT BEING LACE)**

You are hereby requested to register the accompanying  
design for a set of articles in Class.....in the name of

(a) Here insert in full the  
name, address,  
and nation-  
ality of the  
applicant or  
applicants.

(a) .....

of.....

.....

who claims to be the proprietor thereof.

(b) Here set  
out the trade  
description of  
each of the  
articles com-  
prised in  
the set.

The design is to be applied to (b).....

.....

.....

(c) Strike  
out these  
words if no  
previous  
registration  
has been  
effected.

(c) The design has been previously registered in Classes  
..... under No. ....

(Signed).....

Dated this.....day of.....19.....

*To the Comptroller**The Patent Office, Designs Branch,**25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

N.B.—FOUR exactly similar representations or speci-  
mens of the design should accompany this Form.

**FORM DESIGNS No. 4.**

## **PATENTS AND DESIGNS ACTS, 1907 AND 1919**

**APPLICATION FOR REGISTRATION OF A LACE  
DESIGN IN CLASS 9**

DESIGNS.

25. 6d.

You are hereby requested to register the accompanying  
Lace design (without search) in Class 9, in the name of

(a) .....

(a) Here insert in full the name, address, and nationality of the applicant or applicants.

of .....  
.....

who claims to be the proprietor thereof.

(b) The design has been previously registered in Classes  
under No.

(b) Strike out these words if no previous registration has been effected

Dated this..... day of..... 19.....

To the Comptroller,

*The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

N.B.—THREE exactly similar representations or specimens of the design should accompany this Form.

**FORM DESIGNS No. 5.****PATENTS AND DESIGNS ACTS, 1907 AND 1919**

DESIGNS.  
5s.

**APPLICATION FOR REGISTRATION OF A LACE  
DESIGN IN CLASS 9 TO BE APPLIED TO A SET**

You are hereby requested to register (without search) the accompanying design for a set of lace articles in Class 9, in the name of (a).....  
 .....  
 of.....  
 .....

who claims to be the proprietor thereof.

(b) Strike out these words if no previous registration has been effected.

The design has been previously registered in Classes ..... under No. ....  
 (Signed).....

Dated this ..... day of ..... 19 .....

To the Comptroller,  
 The Patent Office, Designs Branch,  
 25 Southampton Buildings, Chancery Lane,  
 London, W.C.2.

N.B.—FOUR exactly similar representations or specimens of the design should accompany this Form.

FORM DESIGNS NO. 6.

## PATENTS AND DESIGNS ACTS, 1907 AND 1919

APPLICATION FOR ENTRY OF ADDRESS FOR  
SERVICE

DESIGNS.
55.

Design No..... registered

in Class.....

I, .....  
 of .....  
 the registered proprietor of the design numbered as above,  
 apply that my address for service may be entered in the  
 Register of Designs as.....

Dated this.....day of.....19.....

\* Signature of  
proprietor.

*To the Comptroller,*  
*The Patent Office, Designs Branch,*  
*25 Southampton Buildings, Chancery Lane,*  
*London, W.C.2.*

FORM DESIGNS No. 7.

PATENTS AND DESIGNS ACTS, 1907 AND 1919

DESIGNS.  
10s.REQUEST FOR STATEMENT OF GROUNDS OF  
DECISION UNDER RULE 31

Application for Design No.....

in Class ....

You are hereby requested under Rule 31 of the Designs Rules, 1920, to state in writing the grounds of your decision and the materials used by you in arriving at such decision.

(Signed) .....

(Address) .....

Dated this ..... day of ..... 19 .....

To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.

FORM DESIGNS No. 8.**PATENTS AND DESIGNS ACTS, 1907 AND 1919****APPLICATION FOR EXTENSION OF TIME WITHIN  
WHICH AN APPLICATION FOR THE REGIS-  
TRATION OF A DESIGN MAY BE COMPLETED**

DESIGNS.
10s.
£1 or £1 10s.

I (or We) hereby apply for.....months' extension of time within which the application No.....for the registration of a Design may be completed.

(a).....  
.....  
.....

(a) Here insert name and full address to which receipt is to be sent.

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

FORM DESIGNS No. 9.

PATENTS AND DESIGNS ACTS, 1907 AND 1919

DESIGNS.

£2.

**APPLICATION FOR EXTENSION OF COPYRIGHT  
IN DESIGN FOR THE SECOND PERIOD OF  
FIVE YEARS**

I (or We) hereby transmit the prescribed fee of £2 for the extension of the copyright in the Design No..... in Class.....for a second period of five years.

\* Here insert name and full address to which certificate is to be sent.

(Name\*) .....

(Address) .....

*To the Comptroller,*

*The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

[This part of the Form to be filled in at the Patent Office.]

**CERTIFICATE OF EXTENSION OF COPYRIGHT  
IN DESIGN FOR THE SECOND PERIOD OF  
FIVE YEARS**

This is to certify that..... did this .....day of.....make the prescribed payment of £2 for the extension of copyright in the Design No.....in Class.....for a second period of five years, and that by virtue of such payment the copyright remains in force until the.....day of.....19.....

SEAL

*The Patent Office,  
Designs Branch,  
London.*

FORM DESIGNS No. 10.

## PATENTS AND DESIGNS ACTS, 1907 AND 1919

**APPLICATION FOR EXTENSION OF COPYRIGHT  
IN DESIGN FOR THE THIRD PERIOD OF  
FIVE YEARS**

DESIGNS.
£5.

I (or We) hereby transmit the prescribed fee of £5 for the extension of the copyright in the Design No.....in Class.....for a third period of five years.

(Name\*).....

\* Here insert name and full address to which certificate is to be sent.

(Address).....

*To the Comptroller,*

*The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

[This part of the Form to be filled in at the Patent Office.]

**CERTIFICATE OF EXTENSION OF COPYRIGHT IN  
DESIGN FOR THE THIRD PERIOD OF FIVE YEARS**

This is to certify that.....did this.....day of.....make the prescribed payment of £5 for the extension of copyright in the Design No.....in Class .....for a third period of five years, and that by virtue of such payment the copyright remains in force until the.....day of.....  
19.....

SEAL

*The Patent Office,  
Designs Branch,  
London.*

DESIGNS.  
10s.  
£1 or £1 10s.

## FORM DESIGNS NO. II.

## PATENTS AND DESIGNS ACTS, 1907 AND 1919

---

**APPLICATION FOR ENLARGEMENT OF TIME  
FOR PAYMENT OF FEE FOR EXTENSION OF  
COPYRIGHT IN DESIGN**


---

I (or We) hereby apply for .....months' extension of time within which payment of the fee of £.....for the extension of the copyright in Design No.....in Class.....may be paid.

(a) Here insert name and full address to which receipt is to be sent.

(a).....  
.....  
.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

FORM DESIGNS NO. 12.**PATENTS AND DESIGNS ACTS, 1907 AND 1919****JOINT REQUEST BY REGISTERED PROPRIETOR AND  
ASSIGNEE OR MORTGAGEE OR LICENSEE, &c., TO  
ENTER THE NAME OF ASSIGNEE, &c., IN THE REGIS-  
TER OF DESIGNS UNDER RULE 38**

DESIGNS.

Fee: Item  
11 or 12.

We, (a)....., of (b).....  
 and (c)....., of (d).....  
 hereby request under Rule 38 of the Designs Rules, 1920,  
 that the name of (e).....  
 carrying on business at (f).....  
 ..... may be entered in the Register of  
 Designs as proprietor (or mortgagee, or licensee) of the  
 Design No.....in Class.....

(a) Name of Registered Proprietor.  
 (b) Address of Registered Proprietor.  
 (c) Name and nationality of Assignee, &c.  
 (d) Address of Assignee, &c.  
 (e) Name of Assignee, &c.  
 (f) Business address of Assignee, &c.

The assignee (or mortgagee, or licensee) is entitled to

the said design or an interest therein in pursuance of

(g).....

(g) Insert full particulars of instrument, if any.

Dated this .....day of .....19.....

(h).....

(h) Signature of Registered Proprietor.

(i).....

(i) Signature of Assignee, &c.

To the Comptroller,

*The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

N.B.—The instrument under which the assignee, mortgagee, or licensee, &c., claims and the original certificate of registration of the design should accompany this form.

FORM DESIGNS No. 13.

## PATENTS AND DESIGNS ACTS, 1907 AND 1919

DESIGNS.

Fee: Item  
11 or 12.JOINT REQUEST BY REGISTERED PROPRIETOR  
AND ASSIGNEE OF DESIGN IN CLASS 9 TO  
ENTER NAME OF ASSIGNEE IN THE REGISTER  
OF DESIGNS

I [or We], the undersigned registered proprietor[s] of Design No.....in Class 9, do hereby inform you that the proprietorship in the said Design has been sold to and acquired by (a).....

(a) Name and nationality of Assignee.  
.....  
(b) Address of Assignee.

and I [or We] request the Comptroller to enter the name of the said.....as registered proprietor(s) in place of my [or our] name at present appearing in the Register.

(c) Insert full particulars of instrument, if any.  
.....  
The assignee is entitled to the said design in pursuance of (c).....

(Signed).....

Dated this.....day of.....19.....

And I [or we] the said.....hereby confirm the above statement and concur in the said request.

(Signed).....

*To the Comptroller,*

*The Patent Office, Designs Branch,*

*25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

N.B.—The instrument under which the assignee claims and the original certificate of registration of the design should accompany this form.

**FORM DESIGNS No. 14.****PATENTS AND DESIGNS ACTS, 1907 AND 1919**

**REQUEST TO ENTER NAME OF SUBSEQUENT  
PROPRIETOR, OR OF MORTGAGEE OR OF LICENSEE,  
&c., OF DESIGN, IN THE REGISTER UNDER  
RULE 39**

<b>DESIGNS.</b>
Fee: Item 13 or 14.

I, (a) ..... (a) *Or We.*

..... Here insert  
name, address,  
and  
nationality.

hereby request that you will enter (b) ..... name (c) in (b) *My or  
the Register of Designs as proprietor (or mortgagee, or our.  
licensee, or as the case may be) of the design No. .... in  
Class..... (c) Or  
names.*

(d) ..... entitled to the said design in pursuance of (d) I am *or  
We are.*

(e) ..... (e) Insert  
full particulars  
of instrument,  
if any.  
\* Signature.

Dated this ..... day of ..... 19 .....

*To the Comptroller,*

*The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

**N.B.—The instrument under which the applicant claims  
and the original certificate of the registration of the design  
should accompany this Form.**

**FORM DESIGNS No. 15.****PATENTS AND DESIGNS ACTS, 1907 AND 1919**

DESIGNS.

f.i.

**APPLICATION UNDER RULE 44 TO VACATE  
ENTRY OF NAME OF MORTGAGEE OR LICENSEE  
IN REGISTER**

Design No....., Class.....

Name of Registered Proprietor.....

Place of Business.....

I, the undersigned,.....

of.....

[or I the undersigned,.....

a member of the Firm of.....

of .....

on behalf of my said Firm].....

apply that the entry of my [or our] name in the Register

of Designs as.....of the design No.....in

Class.....may be vacated.

\* Signature. \*

Dated this.....day of.....19.....

*To the Comptroller,**The Patent Office, Designs Branch,**25 Southampton Buildings, Chancery Lane,**London, W.C.2.*

**FORM DESIGNS NO. 16.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****APPLICATION TO ENTER CHANGE OF NAME  
OF REGISTERED PROPRIETOR OF DESIGN  
UPON THE REGISTER**DESIGNS.  
10s.

I, .....

hereby request that you will enter.....  
in the Register of Designs as proprietor of the design  
No.....in Class.....as entitled to the said design.

There has been no change in the actual proprietorship  
of the said design, but.....

(Name).....

(Address).....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

**FORM DESIGNS No. 17.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****DESIGNS.**

5s.

**APPLICATION FOR ALTERATION OF ADDRESS  
OR ADDRESS FOR SERVICE IN REGISTER  
OF DESIGNS**Design No.....registered

in Class.....

I, .....

of .....

the registered proprietor of the design numbered as above  
 apply that my address [*or* my address for service] in the  
 Register of Designs may be altered to.....

.....

Dated this.....day of.....19.....

\* Signature  
of proprietor.

\* .....

*To the Comptroller,  
 The Patent Office, Designs Branch,  
 25 Southampton Buildings, Chancery Lane,  
 London, W.C.2.*

**FORM DESIGNS No. 18.**

**PATENTS AND DESIGNS ACTS, 1907 AND 1919**

**REQUEST FOR CORRECTION OF CLERICAL  
ERROR IN AN APPLICATION TO REGISTER, OR  
FOR CORRECTION OF CLERICAL ERROR UNDER  
SECTION 70**

**DESIGNS.**

I hereby request that.....

\* ..... \* Signature.

**t..... t Address.**

Dated this ..... day of ..... 19 .....

To the Comptroller,

*The Patent Office, Designs Branch.*

25 Southampton Buildings, Chancery Lane,  
London, W.C.2.

FORM DESIGNS No. 19.

PATENTS AND DESIGNS ACTS, 1907 AND 1919

DESIGNS.
5s.

**APPLICATION BY REGISTERED PROPRIETOR  
OF DESIGN TO CANCEL ENTRY IN REGISTER**

Design No..... Class.....

Name of Registered Proprietor.....

Place of Business.....

I, the undersigned,.....

of .....

[or I, the undersigned,.....

a member of the Firm of .....

of .....on behalf of my

said Firm] .....

apply that the entry in the Register of Designs of the  
Design No. ....in Class.....may be cancelled.

' Signature.

\* .....

Dated this.....day of.....19.....

*To the Comptroller,**The Patent Office, Designs Branch,**25 Southampton Buildings, Chancery Lane,**London, W.C.2.*

**FORM DESIGNS No. 20.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****REQUEST FOR SEARCH UNDER SECTION 57  
WHEN REGISTRATION NUMBER IS SUPPLIED**

DESIGNS. ss.
-----------------

I hereby request that I may be given such information as I may be entitled to under Section 57 of the Patents and Designs Acts, 1907 and 1919, with respect to the design registered under the No.....

(Signed) .....

(Address) .....

Dated this ..... day of ..... 19 .....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

**FORM DESIGNS No. 21.****PATENTS AND DESIGNS ACTS, 1907 AND 1919**

DESIGNS.  
10s.

**REQUEST FOR SEARCH UNDER SECTION 57  
WHEN REGISTRATION NUMBER IS NOT SUPPLIED**

I hereby request that a search may be made in Class.....  
in respect of the design (annexed hereto in duplicate) and  
that I may be given such information as I may be entitled  
to under Section 57 of the Patents and Designs Acts,  
1907 and 1919.

(Signed) .....

(Address) .....

Dated this.....day of.....19.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

**FORM DESIGNS NO. 22.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****REQUEST FOR SEARCH UNDER RULE 56**

DESIGNS. 1919.
-------------------

I hereby request that a search may be made in Class.....  
and that I may be informed whether the Design (annexed  
hereto in duplicate) to be applied to.....

.....  
appears to be identical with or closely resembles any registered  
design applied to such goods of which the copyright  
is still existing.

(Signed).....

(Address).....

Dated this.....day of.....19.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane.  
London, W.C.2.*

**FORM DESIGNS No. 23.****PATENTS AND DESIGNS ACTS, 1907 AND 1919**

DESIGNS.  
10s.

**REQUEST FOR CERTIFICATE FOR USE IN LEGAL  
PROCEEDINGS OR OTHER SPECIAL PURPOSE**

Design No....., registered in Class.....

in the name of.....

\* Here state  
the purpose  
for which the  
certificate is  
required, i.e.,  
whether for  
use in legal  
proceedings (if  
so, state title  
of proceed-  
ings) or for  
what other  
purpose.

I, .....,  
of .....,  
the registered proprietor of the above Design, hereby  
request you to furnish me with your Certificate for use  
in\* .....

† Signature.

†.....

Dated this.....day of.....19.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

**FORM DESIGNS NO. 24.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****APPLICATION FOR CANCELLATION OF THE  
REGISTRATION OF A DESIGN UNDER SECTION 58**

DESIGNS. £2.
-----------------

Design No.....in Class.....

I, .....

of .....

hereby apply that the registration of Design No.....in  
Class.....may be cancelled on the grounds that

(a) it was published in the United Kingdom prior to  
the date of registration, or

(b) it is applied by manufacture to an article in a foreign  
country and is not so applied by manufacture in the  
United Kingdom to such an extent as is reasonable in  
the circumstances of the case.

(a) and (b)  
Strike out the  
ground which  
is not applic-  
able to the  
case.

My address for service in the United Kingdom is—

(Signed).....

Dated this.....day of.....19.....

To the Comptroller,  
 The Patent Office, Designs Branch,  
 25, Southampton Buildings, Chancery Lane,  
 London, W.C.2.

**FORM DESIGNS No. 25.****PATENTS AND DESIGNS ACTS, 1907 AND 1919.**

DESIGNS.  
£1.

**NOTICE THAT HEARING OF APPLICATION FOR  
CANCELLATION OF REGISTRATION OF A  
DESIGN WILL BE ATTENDED**

(a) Here in-  
sert in full  
name and  
address.

(a) I (or We) .....

hereby give notice that the hearing in reference to the application to cancel the registration of Design No.....in Class.....will be attended by myself (or ourselves) or by some person on my (or our) behalf.

(Signed) .....

Dated this.....day of.....19.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

**FORM DESIGNS No. 26.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****NOTICE OF INTENDED EXHIBITION OF AN  
UNREGISTERED DESIGN**

DESIGNS.

ss.

(a) .....

(a) Here  
state name,  
address, and  
nationality of  
applicant.

hereby give notice of my intention to exhibit a.....  
 of..... at the .....Exhibition  
 (which (b) .....on .....19.....), under  
 the provisions of the Patents and Designs Acts, 1907  
 and 1919.

(b) State  
"opened" or  
"is to open."

(c) .....

(c) Insert  
brief descrip-  
tion of design  
and furnish  
sketch,  
drawing or  
specimen.

(Signed) .....

Dated this.....day of.....19.....

To the Comptroller,  
 The Patent Office, Designs Branch,  
 25 Southampton Buildings, Chancery Lane,  
 London, W.C.2.

FORM DESIGNS (MANCHESTER) NO. I.

## PATENTS AND DESIGNS ACTS, 1907 AND 1919

DESIGNS.

55.

APPLICATION FOR REGISTRATION OF DESIGN  
IN CLASS 13 OR CLASS 14(This application must be accompanied by an unstamped  
duplicate)

(a) Here insert in full the name, address, and nationality of the applicant or applicants.

You are hereby requested to register the accompanying design in Class.....in the name of (a).....

.....  
of .....

who claims to be the proprietor thereof.

(b) Here state the kind of goods, i.e.; "pieces goods" or "handkerchiefs and shawls."

The design is to be applied to (b).....

(c) The design been previously registered in Classes.....

.....under No. ....

(c) Strike out these words if no previous registration has been effected.

(Signed) .....

Dated this.....day of.....19.....

\* Strike out one of these addresses.

\* To the Comptroller,

The Patent Office, Designs Branch,

25 Southampton Buildings, Chancery Lane,  
London, W.C.2

or

\* To the Keeper of Cotton Marks,

108 Deansgate,

Manchester.

N.B.—FOUR exactly similar representations or specimens of the design should accompany this Form.

FORM DESIGNS (MANCHESTER) No. 2.

## PATENTS AND DESIGNS ACTS, 1907 AND 1919

APPLICATION FOR REGISTRATION OF DESIGN  
IN CLASS 15(This application must be accompanied by an unstamped  
duplicate)

DESIGNS.

2s. 6d.

You are hereby requested to register the accompanying

design (without search) in Class 15, in the name of (a)

(a) Here insert in full the  
name, address,  
and nation-  
ality of the  
applicant or  
applicants......  
of ..........  
who claims to be the proprietor thereof.This design consists substantially of the checks or  
stripes only.(b) The design has been previously registered in Classes  
.....under No.....(b) Strike out  
these words if  
no previous  
registration  
has been  
effected.

(Signed).....

Dated this ..... day of ..... 19 .....

\* To the Comptroller,  
 The Patent Office, Designs Branch,  
 25 Southampton Buildings, Chancery Lane,  
 London, W.C.2

\* Strike out  
one of these  
addresses.

\* To the Keeper of Cotton Marks,  
 108 Deansgate,  
 Manchester.

N.B.—FOUR exactly similar representations or speci-  
mens of the design should accompany this Form.

FORM DESIGNS (MANCHESTER) NO. 3.

PATENTS AND DESIGNS ACTS, 1907 AND 1919

**DESIGNS.**  
5s.

## NOTICE TO KEEPER UNDER RULE 84

(This notice must be accompanied by an unstamped duplicate)

We, .....

of .....

and .....

of .....

hereby give you notice that a dispute has arisen between us about the Design (or Designs) numbered.....in Class....., and that we have made a joint request to the Manchester Chamber of Commerce to appoint a single arbitrator (*or as the case may be*) to decide and make an award upon the merits of that dispute, inclusive of an award as to any damages or costs to be paid by one party to the other, and we have consented, and as evidence thereof we have signed this Notice, that such award, when made, shall be final and binding upon us, and that except for the purpose of enforcing such award we shall have no right to appeal, and none of us will make any application to any Court of Law or other authority in respect of the subject matter of such award or of anything contained in it, and that no Court of Law or other authority shall entertain or be asked to entertain any such appeal or application.

(Signed) { .....

Dated this ..... day of ..... 19 .....

To the Keeper of Cotton Marks,  
108 Deansgate,  
Manchester.

**FORM DESIGNS No. 27.****PATENTS AND DESIGNS ACTS, 1907 AND 1919****FORM OF APPEAL TO LAW OFFICER**

DESIGNS. £3.
-----------------

In the matter of an application by .....

for Registration of a Design in Class ..... No. ....

(a) I (or We).....  
of .....(a) Here insert name and  
full address of  
appellant or  
appellants.hereby give notice of appeal to the Law Officer from the  
decision of .....

dated the ..... day of ..... 19 .....

Signature .....

Date .....

NOTE.—This Notice has to be sent to the Comptroller  
at the Patent Office, London, W.C., and an unstamped  
copy of the same to the Chief Clerk, Law Officers' Depart-  
ment, at Room 545, Royal Courts of Justice, London.

**FORM DESIGNS No. 28.****PATENTS AND DESIGNS ACTS, 1907 AND 1919**

**DESIGNS.  
195.**

**REQUEST FOR THE REGISTER TO BE ALTERED  
IN PURSUANCE OF AN ORDER OF THE COURT**

Design No.....in Class .....

I hereby request you to alter the entry in the Register of Designs in accordance with the terms of the Order of the Court dated....., an office copy of which is sent herewith.

(Signed) .....

(Address) .....

Dated this.....day of.....19.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

FORM DESIGNS No. 29.**PATENTS AND DESIGNS ACTS, 1907 AND 1919****APPLICATION FOR COPY OF CERTIFICATE OF  
REGISTRATION OF DESIGN**

DESIGNS. 10s.
------------------

I hereby request you to furnish me with a Copy Certificate of Registration of Design No.....in Class.....

(Signed).....

(Address).....

Dated this .....day of .....19.....

*To the Comptroller,  
The Patent Office, Designs Branch,  
25 Southampton Buildings, Chancery Lane,  
London, W.C.2.*

Dated this 14th day of February, 1920.

*A. C. Geddes,  
President of the Board of Trade.*

*Third Schedule***CLASSIFICATION OF GOODS**

CLASS 1.—Articles composed wholly of metal or in which metal predominates, and jewellery.

CLASS 2.—Books and bookbinding of all materials.

CLASS 3.—Articles composed wholly of wood, bone, ivory, papier mâché, or other solid substances not included in other classes, or of materials in which such substances predominate.

CLASS 4.—Articles composed wholly of glass, earthenware, or porcelain, clay (burnt or baked), or cement or in which such materials predominate.

CLASS 5.—Articles composed wholly of paper, card-board, mill-board, or straw-board (except articles included in Class 2, and paper hangings), or in which such materials predominate.

CLASS 6.—Articles composed wholly of leather or in which leather predominates, not included in other classes.

CLASS 7.—Paper hangings.

CLASS 8.—Carpets, rugs, and floor coverings in all materials.

CLASS 9.—Lace.

CLASS 10.—Boots and shoes.

CLASS 11.—Millinery and wearing apparel (except boots and shoes).

CLASS 12.—Goods not included in other classes.

CLASS 13.—Printed or woven designs on textile piece goods (other than checks or stripes).

CLASS 14.—Printed or woven designs on handkerchiefs and shawls (other than checks or stripes).

CLASS 15.—Printed or woven designs on textile piece goods or on handkerchiefs or shawls being checks or stripes.

---

Dated this 14th day of February, 1920.

*A. C. Geddes,*  
President of the Board of Trade.

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